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Contents

Federal Register

Vol. 63, No. 210

Friday, October 30, 1998

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 63, No. 210
Friday, October 30, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1724 and 1726

RIN 0572–AB42

Electric Program Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, engineering services, or architectural services financed through loans made or guaranteed by RUS. The required contract forms are currently published in text format in the Code of Federal Regulations (CFR). This final rule would eliminate this unnecessary and burdensome publication in the CFR.

DATES: Effective October 30, 1998.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A notice of final rule entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) exempted RUS loans and loan guarantees from coverage under this order.

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and therefore, the Regulatory Flexibility Act does not apply to this rule.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this final rule have been submitted to OMB for approval. The paperwork contained in this rule will not be effective until approved by OMB.

Send questions or comments regarding any aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

RUS will change the manner in which it publishes the standard forms of contracts that borrowers are required to use when contracting for construction, procurement, architectural, or engineering services financed through loans made or guaranteed by RUS.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. See section 5.16 of appendix A to subpart C to part 1718. RUS currently implements these provisions of its loan agreement through parts 1724 and 1726 which generally prescribe when and how borrowers are required to use RUS standard form contracts and identify the standard contract forms to be used. Title 7 CFR part 1724 covers engineering and architectural services contract forms, and 7 CFR part 1726 covers construction and procurement contract forms.

The required standard contract forms currently are published in full text format in title 7 of the CFR (see, e.g.,

§§ 1724.74–1724.76 and § § 1726.312–1726.352.) RUS also publishes forms of contracts which serve as guidance to borrowers and which borrowers may use at their discretion. All of these forms are available, in a format suitable for use as a contract, from RUS or the Government Printing Office (GPO), as provided in § 1724.70 and § 1726.300. If an RUS borrower is required by part 1724 or 1726 to use a form of contract, the borrower must use the contract form in that format available from RUS or GPO. RUS believes that the current system of publishing the complete text of the contract forms in the CFR is unnecessary and that, consistent with the agency's objective to streamline regulatory text and to provide borrowers' with a user friendly regulatory system, the complete text of the required contract forms should no longer be published in the CFR.

Rather than publish the complete text of the standard contract forms in the CFR, RUS will identify in § 1724.74 and § 1726.304 all required contract forms by number, issue date, name, purpose, and source. To the extent that RUS may be required to publish its forms of contract pursuant to section 552(a) of the Administrative Procedure Act (APA) (5 U.S.C. 552(a)) or otherwise, such requirement is met by the identification of the standard contract forms in parts 1724 and 1726. Moreover, RUS provides all borrowers with actual notice of the forms of contract they are required to use in contracting. As the rule states in § 1724.73 and § 1726.303, upon initially entering into a loan agreement with RUS, borrowers are provided with copies of contract forms. Thereafter, should RUS promulgate new or revised standard contract form(s), following the procedures discussed below, RUS will revise the list of standard forms as set forth in § 1724.74 or § 1726.304 or both and send the new or revised standard forms to all affected borrowers by regular or electronic mail. Borrowers, as well as the public, can obtain copies of all standard contract forms from RUS or GPO.

In addition to identifying standard forms and eliminating full publication of the text of each standard contract form in the CFR, RUS will clarify the procedures that will be followed when RUS promulgates a new or revised standard contract form. To the extent that RUS is required by section 553 of the APA (5 U.S.C. 553) or otherwise to provide notice in the FR and an opportunity for public comment in promulgating standard contract forms, RUS will publish a FR notice of rulemaking announcing, as appropriate, a revision in, or a proposal to revise the list of standard contract forms set forth in sections 1724.74 or 1726.304 or both. The revision may change the existing list by, for example, identifying a new required contract form or changing the issuance date of a listed form. The supplementary information section of the FR notice will describe the substantive change in the identified standard contract form and may append the standard contract form or relevant portions thereof. As appropriate, the notice will provide an opportunity for interested persons to provide comments. A copy of each such **Federal Register** notice will be sent by regular or electronic mail to all borrowers.

Finally, this final rule clarifies certain aspects of the requirement that borrowers use RUS standard forms of contract. Absent a waiver by RUS, borrowers are required to use those standard forms in effect as of the date the borrower issues bid package to bidders. Borrowers can determine the appropriate standard form based on the issuance date of the form as identified by the most recently published list set forth in § 1724.74 and § 1726.304. RUS may waive for good cause, on a case by case basis, the requirement to use RUS standard forms of contracts pursuant to procedures set forth in the regulation. A failure on the part of the borrower to use standard forms of contracts as prescribed in parts 1724 or 1726 is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise. Consistent with the changes discussed above, RUS is amending those sections of existing regulations that currently set forth the full text of contracts for the purpose of deleting such text. Deletion of the full text from the CFR will not affect the requirement that borrowers use the prescribed forms of contracts. The rule also relocates and makes minor revisions to information regarding contractors bonds and interest on overdue accounts.

List of Subjects

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR Chapter XVII is amended as follows:

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

1. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1724.3 is amended by adding definitions in alphabetical order to read as follows:

§ 1724.3 Definitions.

* * * * *

GPO means Government Printing Office.

* * * * *

RE Act means the Rural Electrification Act of 1936 as amended (7 U.S.C. 901 *et seq.*).

RUS means Rural Utilities Service

* * * * *

3. Section 1724.10 is added to subpart A to read as follows:

§ 1724.10 Standard forms of contracts for borrowers.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through E of this part prescribe when and how borrowers are required to use RUS standard forms of contracts for engineering and architectural services. Subpart F of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for engineering and architectural services.

4. Section 1724.70 is revised to read as follows:

§ 1724.70 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. (See section 5.16 of appendix A to subpart C of part 1718 of this chapter.) This subpart prescribes RUS procedures in promulgating electric program standard contract forms

and identifies those forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1724.74(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms identified in the List of Guidance Contract Forms contained in § 1724.74(c) that the borrowers may but are not required to use in the planning, design, and construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

5. Section 1724.71 is revised to read as follows:

§ 1724.71 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the RE Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called ''listed contract forms'') identified in the List of Required Standard Contract Forms contained in § 1724.74(c).

(b) *Compliance.* If a borrower is required by this part to use a listed contract form, the borrower shall use the listed contract form in the format available from RUS. The forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so as to indicate the difference from the listed contract form. Electronic reproduction is not acceptable.

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS with a written request explaining the need for the waiver.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

6. Section 1724.72 is added to read as follows:

§ 1724.72 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are published by RUS. Interested parties may obtain the forms from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Stop 1522, Washington, DC 20250–1522, telephone number (202) 720–8674. The list of contract forms can be found in § 1724.74(c), List of Required Contract Forms.

7. Section 1724.73 is added to read as follows:

§ 1724.73 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1724.74, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. A copy of each such **Federal Register** document shall be sent by regular or electronic mail to all borrowers.

8. Section 1724.74 is revised to read as follows:

§ 1724.74 List of electric program standard contract forms.

(a) *General.* The following is a list of RUS electric program standard contract forms for architectural and engineering services. Paragraph (c) of this section contains the list of required contract forms, *i.e.*, those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section contains the list of guidance contract forms, *i.e.*, those forms of contracts provided as guidance to borrowers in the planning, design, and construction of their systems. All of these forms are available from RUS. See § 1724.72(b) for availability of these forms.

(b) *Issuance date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms in paragraph (c) of this section, as most recently published as of the date the borrower executes the contract.

(c) *List of required contract forms.* (1) RUS Form 211, Rev. 6–98, Engineering Service Contract for the Design and Construction of a Generating Plant. This form is used for engineering services for generating plant construction.

(2) RUS Form 220, Rev. 6–98, Architectural Services Contract. This form is used for architectural services for building construction.

(3) RUS Form 236, Rev. 6–98, Engineering Service Contract—Electric System Design and Construction. This form is used for engineering services for distribution, transmission, substation, and communications and control facilities.

(d) *List of guidance contract forms.* (1) RUS Form 179, Rev. 9–66, Architects and Engineers Qualifications. This form is used to document architects and engineers qualifications.

(2) RUS Form 215, Rev. 5–67, Engineering Service Contract—System Planning. This form is used for engineering services for system planning.

(3) RUS Form 234, Rev. 3–57, Final Statement of Engineering Fee. This form is used for the closeout of engineering services contracts.

(4) RUS Form 241, Rev. 3–56, Amendment of Engineering Service Contract. This form is used for amending engineering service contracts.

(5) RUS Form 244, Rev. 12–55, Engineering Service Contract—Special

Services. This form is used for miscellaneous engineering services.

(6) RUS Form 258, Rev. 4–58, Amendment of Engineering Service Contract—Additional Project. This form is used for amending engineering service contracts to add an additional project.

(7) RUS Form 284, Rev. 2–84, Final Statement of Cost for Architectural Service. This form is used for the closeout of architectural services contracts.

(8) RUS Form 297, Rev. 12–55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9–58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

§§ 1724.75 and 1724.76 [Removed and Reserved]

9. Sections 1724.75 and 1724.76 are removed and reserved.

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

10. The authority citation for part 1726 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

11. Section 1726.24 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1726.24 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and the borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through H and J of this part prescribe when and how borrowers are required to use RUS standard forms of contracts in procurement and construction. Subpart I of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for procurement and construction.

* * * * *

12. Section 1726.26 is added to read as follows:

§ 1726.26 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest ''Prime Rate'' listed in the ''Money Rates'' section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

13. Section 1726.27 is added to read as follows:

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Form 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(c) Surety companies providing contractor's bonds shall be listed as acceptable sureties in the U.S. Department of the Treasury Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Copies of the circular and interim changes may be obtained directly from the Government Printing Office (202) 512–1800. Interim changes are published in the **Federal Register** as they occur. The list is also available through the Internet at http://www.fms.treas.gov/c570/index.html and on the Department of the Treasury's computerized public bulletin board at (202) 874–6887.

14. Section 1726.300 is revised to read as follows:

§ 1726.300 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. (See section 5.16 of appendix A to subpart C of part 1718 of this chapter.) This subpart prescribes RUS procedures in promulgating standard contract forms and identifies those forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1726.304(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms contained in § 1726.304(d) that the borrowers may but are not required to use in the construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

15. Section 1726.301 is revised to read as follows:

§ 1726.301 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the Rural Electrification Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called ''listed contract forms'') identified in the List of Required Contract Forms, § 1724.304(c).

(b) *Compliance.* If a borrower is required by this part or by the loan agreement to use a listed contract form, the borrower shall use the listed contracts in the format available from RUS or GPO. The forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so as to indicate the difference from the listed contract form. Electronic reproduction is not acceptable except where indicated in § 1726.304(c).

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS

with a written request explaining the need for the waiver. Waiver requests should be made prior to issuing the bid package to bidders.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

16. Section 1726.302 is revised to read as follows:

§ 1726.302 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are available from either RUS or the Government Printing Office (GPO), as indicated in § 1726.304. Interested parties may obtain the forms from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Washington DC 20250–1522, telephone number (202) 720–8674, or the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954, telephone number (202) 512–1800. The listed contract forms can be found in § 1724.304(c), List of Required Contract Forms.

17. Section 1726.303 is revised to read as follows:

§ 1726.303 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1726.304, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the document shall provide an opportunity for interested persons to provide comments. A copy of each such **Federal Register** document will be sent by regular or electronic mail to all borrowers.

18. Section 1726.304 is added to read as follows:

§ 1726.304 List of electric program standard contract forms.

(a) *General.* This section contains a list of RUS electric program standard contract forms. Paragraph (c) of this section contains the list of required contract forms, *i.e.*, those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section sets forth the list of guidance contract forms, i.e., those forms of contracts provided as guidance to borrowers in the construction of their systems. See § 1726.302(b) for availability of these forms.

(b) *Issuance date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms in paragraph (c) of this section, as most recently published as of the date the borrower issues the bid package to bidders.

(c) *List of required contract forms.* (1) RUS Form 168b, Rev. 2–95, Contractor's Bond. This form is used to obtain a surety bond and is included in RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, and 831.

(2) RUS Form 168c, Rev. 2–95, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee. This form is available from RUS.

(3) RUS Form 180, Rev. 2–95, Construction Contract Amendment. This form is used to amend distribution line construction contracts. This form is available from RUS.

(4) RUS Form 181, Rev. 2–95, Certificate of Completion, Contract Construction for Buildings. This form is used for the closeout of RUS Form 257. This form is available from RUS.

(5) RUS Form 187, Rev. 2–95, Certificate of Completion, Contract Construction. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

(6) RUS Form 198, Rev. 2–95, Equipment Contract. This form is used for equipment purchases. This form is available from RUS.

(7) RUS Form 200, Rev. 2–95, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment. This form is available from RUS.

(8) RUS Form 201, Rev. 2–95, Right-of-Way Clearing Contract. This form is used for distribution line right-of-way clearing work which is to be performed separate from line construction. This form is available from RUS.

(9) RUS Form 203, Rev. 2–95, Transmission System Right-of-Way Clearing Contract. This form is used for transmission right-of-way clearing work which is to be performed separate from line construction. This form is available from RUS.

(10) RUS Form 213, Rev. 2–95, Certificate (''Buy American''). This form is used to document compliance with the ''Buy American'' requirement. This form is available from RUS.

(11) RUS Form 224, Rev. 2–95, Waiver and Release of Lien. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

(12) RUS Form 231, Rev. 2–95, Certificate of Contractor. This form is used for the closeout of and is included in RUS Forms 200, 203, 764, 786, 830, and 831.

(13) RUS Form 238, Rev. 2–95, Construction or Equipment Contract Amendment. This form is used to amend contracts except distribution line construction contracts. This form is available from RUS.

(14) RUS Form 251, Rev. 2–95, Material Receipt. This form is used to document receipt of owner furnished materials and is included in RUS Forms 764, 830, and 831. Electronic reproduction is acceptable for RUS Form 251.

(15) RUS Form 254, Rev. 2–95, Construction Inventory. This form is used for the closeout of RUS Forms 203, 764, 830, and 831. This form is available from RUS. Electronic reproduction is acceptable for RUS Form 254.

(16) RUS Form 257, Rev. 2–95, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction. This form is available from GPO.

(17) RUS Form 307, Rev. 2–95, Bid Bond. This form is used to obtain a bid bond and is included in RUS Forms 200, 203, 257, 764, 830, and 831.

(18) RUS Form 764, Rev. 2–95, Substation and Switching Station Erection Contract. This form is used to

construct substations and switching stations. This form is available from RUS.

(19) RUS Form 786, Rev. 2–95, Electric System Communications and Control Equipment Contract. This form is used for delivery and installation of equipment for system communications. This form is available from RUS.

(20) RUS Form 790, Rev. 2–95, Distribution Line Extension Construction Contract (Labor and Materials). This form is used for limited distribution construction accounted for under work order procedure. This form is available from GPO.

(21) RUS Form 792, Rev. 2–95, Distribution Line Extension Construction Contract (Labor Only). This form is used for limited distribution construction accounted for under work order procedure. This form is available from GPO.

(22) RUS Form 792b, Rev. 2–95, Certificate of Construction and Indemnity Agreement. This form is used for the closeout of and is included in RUS Forms 201, 790, 792.

(23) RUS Form 792c, Rev. 2–95, Supplemental Contract for Additional Project. This form is used to amend other contracts and is included in RUS Forms 201, 790, 792.

(24) RUS Form 830, Rev. 2–95, Electric System Construction Contract (Labor and Materials). This form is used for distribution and transmission line project construction. This form is available from GPO.

(25) RUS Form 831, Rev. 2–95, Electric Transmission Construction Contract (Labor and Materials). This form is used for transmission line project construction. This form is available from GPO.

(d) *List of guidance contract forms.* (1) RUS Form 172, Rev. 9–58, Certificate of Inspection, Contract Construction. This form is used to notify RUS that construction is ready for inspection. This form is available from RUS.

(2) RUS Form 173, Rev. 3–55, Materials Contract. This form is used for distribution, transmission, and general plant material purchases. This form is available from RUS.

(3) RUS Form 274, Rev. 6–81, Bidder's Qualifications. This form is used to document bidder's qualifications. This form is available from RUS.

(4) RUS Form 282, Rev. 11–53, Subcontract. This form is used for subcontracting. This form is available from RUS.

(5) RUS Form 458, Rev. 3–55, Materials Contract. This form is used to obtain generation plant material and equipment purchases not requiring acceptance tests at the project site. This form is available from RUS.

§§ 1726.310—1726.352 [Removed and Reserved]

18. Sections 1726.310 through 1726.352 are removed and reserved.

Dated: October 23, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–29131 Filed 10–29–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

10 CFR Part 1003

RIN 1901–AA55

Amendments to Office Of Hearings and Appeals Procedural Regulations

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts several minor technical amendments to its procedural regulations governing most proceedings before the Office of Hearings and Appeals (OHA), a quasi-judicial branch of the DOE, pertaining to matters within the jurisdiction of that Office. These amendments adjust OHA's procedural regulations to reflect the physical relocation of its public reference room and a change of the public reference room's business hours. In addition, these regulatory amendments implement OHA's new policy of publishing certain information on its Internet World Wide Web site rather than publishing that information in the **Federal Register**.

DATES: This rule is effective November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Steven L. Fine, Attorney-Examiner, or Robert B. Palmer, Attorney-Examiner, Office of Hearings and Appeals, U.S. Department of Energy 1000, Independence Avenue, SW., Washington, DC 20585–0107,Telephone: (202) 426–1449, Internet: steven.fine@hq.doe.gov and robert.palmer@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

These regulatory amendments result from OHA's continuing reinvention efforts. In order to serve the public more efficiently, the OHA has consolidated all of its operations in one work space. Previously, OHA's operations were conducted at three locations in two separate buildings. This consolidation has required the relocation of OHA's Public Reference Room from the Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C., to 950 L'Enfant Plaza, Washington, D.C. In addition, OHA has determined that significant cost savings could be achieved by discontinuing OHA's current practice of publishing certain information in the **Federal Register**.

Instead, OHA will publish this information on its Internet web site at www.oha.doe.gov. By placing this information on the Internet, OHA will be making it more accessible to the majority of Americans, while conserving economic and natural resources. These rules are merely technical in nature and do not effect any substantive changes in the existing regulations.

II. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule. Today's regulations do not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under Executive Order 12612.

C. Regulatory Flexibility Analysis

With regard to regulations for which a general notice of proposed rulemaking is required by law, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis unless the issuing agency certifies that the regulations will not have a significant economic impact on a substantial number of small entities. This action only effects minor technical changes in existing procedural regulations, and under the Administrative Procedure Act, such regulations are excepted from the

requirement for publication of a general notice of proposed rulemaking. 5 U.S.C. 553(b)(A). Accordingly, this action is not subject to a requirement that a regulatory flexibility analysis be prepared.

D. National Environmental Policy Act

The rules issued today are strictly technical and procedural in nature. Preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required for such rules under Appendix A to subpart D of 10 CFR part 1021. More specifically, DOE has determined that this rule is covered under the Categorical Exclusion found in paragraph A.6 of Appendix A to subpart D of part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Paperwork Reduction Act

There will be no additional paperwork burden imposed by the rules issued today. Therefore, the goals of the Paperwork Reduction Act are not diminished by the rules.

F. Small Business Regulatory Enforcement Fairness Act

This action is not subject to the Congressional notification requirements of 5 U.S.C. 801 because it involves purely procedural rules which are excepted from the definition of ''rule'' in 5 U.S.C. 804.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

List of Subjects in 10 CFR Part 1003

Administrative practice and procedure, Appeal procedures, Hearing and appeal procedures, Practice and procedure.

Issued in Washington, DC, on October 22, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, part 1003 of title 10 of the Code of Federal Regulations is amended to read as follows:

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

1. The authority citation for part 1003 continues to read as follows:

Authority: 15 U.S.C. 761 *et seq.*; 42 U.S.C. 7101 *et seq.*

Subpart A—General Provisions

2. Section 1003.4 is amended by revising paragraph (c) to read as follows:

§ 1003.4 Filing of documents.

* * * * *

(c) Hand-delivered documents to be filed with the OHA shall be submitted to 950 L'Enfant Plaza, SW., Washington, DC, during normal business hours.

* * * * *

§ 1003.11 [Amended]

3. Section 1003.11 is amended by adding immediately after ''20585'' the phrase ''−0107'' and by revising the Fax phone number to read ''(202) 426–1415.''

4. Section 1003.13 is amended by revising the introductory paragraph to read as follows:

§ 1003.13 Public reference room.

A public reference room shall be maintained at the OHA, 950 L'Enfant Plaza, S.W., Washington, DC. In this room, the following information shall be made available for public inspection and copying, during normal business hours:

* * * * *

§ 1003.14 [Amended]

5. Section 1003.14 is amended by removing the phrase ''in the **Federal Register**'' and adding in its place the words ''on its Internet World Wide Web site,'' and by adding after the last sentence the words ''The OHA's web site is located at http://www.oha.doe.gov.''

[FR Doc. 98–29141 Filed 10–29–98; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615, 620 and 627

RIN 3052–AB58

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Affairs; Disclosure to Shareholders; Title V Conservators and Receivers; Capital Provisions; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (63 FR 39219, July 22, 1998) that amended the capital adequacy and related regulations to address: interest rate risk; the grounds for appointing a conservator or receiver; capital and bylaw requirements for service corporations; and various computational issues and other issues involving the capital regulations. This document corrects an error in one of the amendatory instructions of the final rule.

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register**, an error was inadvertently made in amendatory instruction number 8 on page 39226, column 2.

Accordingly, the amendatory instruction is corrected to read as follows:

8. Section 615.5210 is amended by adding new paragraph (e)(11); removing paragraphs (f)(2)(iii) and (f)(2)(v); redesignating paragraph (f)(2)(iv) as new paragraph (f)(2)(iii); adding a new paragraph (f)(2)(iv); removing the

reference ''1 year'' and adding in its place, the reference ''14 months'' in paragraph (f)(3)(ii)(C)(2); and revising paragraphs (a), (b), (e) introductory text, (e)(1), (e)(6), (e)(10), (f)(2)(i), (f)(2)(ii), heading of newly designated (f)(2)(iii), (f)(3)(ii)(A), and (f)(3)(iii) to read as follows:

Dated: October 27, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–29101 Filed 10–29–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–51–AD; Amendment 39–10862; AD 96–10–01 R1]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 96–10–01, which currently requires a complete landing light support replacement on certain The New Piper Aircraft, Inc. (Piper) Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes. Some of the serial numbers for these airplanes were incorrectly referenced in the Applicability section of AD 96–10–01. This AD maintains the requirements of AD 96–10–01, and corrects the serial numbers referenced in the Applicability section. The actions specified by this AD are intended to prevent the landing light retainer support seal from being ingested by the updraft carburetor, which could result in rough engine operation or possible engine failure and loss of control of the airplane.

DATES: Effective December 14, 1998.

The incorporation by reference of Piper Service Bulletin No. 975, dated November 2, 1994, as listed in the regulations, was previously approved by the Director of the Federal Register as of June 10, 1996 (61 FR 19813, May 3, 1996).

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 9, 1998 (63 FR 31374). The NPRM proposed to revise AD 96–10–01 to retain the requirement of accomplishing a complete landing light support replacement, and proposed to change the applicability of the AD, as follows: Models PA–28–140 airplanes, serial numbers (S/N) 28–20000 through 28–7725290, Models PA–28–150, 160, and 180 airplanes, S/N 28–1 through 28–7505259, and S/N 28–E13 to Models PA–28–140 airplanes, S/N 28–20000 through 28–7725290, PA–28–150, PA–28–160, and PA–28–180, serial numbers 28–1 through 28–1760. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Piper Service Bulletin No. 975, dated November 2, 1994.

The NPRM was the result of inadvertent mistakes in the serial number effectivity of certain airplane models referenced in AD 96–10–01.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 10,100 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $140 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,626,000. This figure is based on the assumption that all of the affected airplanes have old landing light support and seal assemblies and that none of the owners/operators of the affected airplanes have replaced the landing light support and seal assemblies with parts of improved design.

Piper has informed the FAA that parts have been distributed to equip approximately 7,021 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of this AD will be reduced by $1,825,460, from $2,626,000 to $800,540.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 96–10–01, Amendment 39–9606 (61 FR 19813, May 3, 1996), and adding a new AD to read as follows:

96–10–01 R1 The New Piper Aircraft, Inc.: Amendment 39–10862; Docket No. 95–CE–51–AD; Revises AD 96–10–01, Amendment 39–9606.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial Nos.
PA–28–140	28–20000 through 28–7725290.
PA–28–150, PA–28–160, and PA–28–180	28–1 through 28–1760.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 2: Early compliance is encouraged.

To prevent the landing light seal from lodging in the carburetor, which could result in rough engine operation or possible engine failure and loss of control of the airplane, accomplish the following:

(a) Replace the landing light support and seal assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piper Service Bulletin No. 975, dated November 2, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 96–10–01, are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) The replacements required by this AD shall be done in accordance with Piper Service Bulletin No. 975, dated November 2, 1994. This incorporation by reference was previously approved by the Director of the Federal Register as of June 10, 1996 (61 FR 19813, May 3, 1996). Copies may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on December 14, 1998.

Issued in Kansas City, Missouri, on October 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28970 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWA–1]

RIN 2120–AA66

Modification of the Phoenix Class B Airspace Area; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Phoenix, AZ, Class B airspace area. Specifically, this action reconfigures several area boundaries; creates two new areas; and raises and/or lowers the floors of several existing areas. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the Phoenix Class B airspace area while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0901 UTC, November 5, 1998.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated TCA (now known as Class B airspace area) primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule

discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in this final rule.

Background

The Terminal Control Airspace area (TCA) program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On February 4, 1997, the FAA published a notice in the **Federal Register**, Airspace Docket 94–AWA–1, proposing to modify the Phoenix Class B airspace area (62 FR 5188). The notice proposed to reconfigure several area boundaries; create two new areas; and raise and/or lower the floors of several existing areas within the Phoenix Class B airspace area. The comment period for this proposal closed on September 22, 1997.

On April 2, 1997, the FAA reopened the comment period in response to requests from several user organizations for additional time to fully analyze the proposal and to formulate and submit comments (62 FR 15635).

On August 22, 1997, the FAA published a supplemental notice of proposed rulemaking to correct an error in the bearings published in the original notice (62 FR 44598). Interested persons were invited to participate by submitting written data, views, or arguments.

The FAA received 61 comments in response to notice 94–AWA–1. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's responses are summarized below.

Analysis of Comments

Requests for Additional Hearings

Several commenters requested that the FAA hold additional hearings to advise the public on the specifics of this proposed action. These commenters stated that, in their opinion, the time lag between the July 17, 1993, public hearing and February 4, 1997, publication of the NPRM was reason enough for the FAA to hold additional airspace meetings.

The FAA disagrees with these commenters. The FAA held a pre-NPRM meeting to inform airspace users of the planned modification of the Phoenix Class B airspace area and to provide local airspace users an opportunity to present input on the proposed modifications. Since no changes to the original planned modification had been instituted, it was determined by the FAA that additional airspace meetings were not necessary.

Environmental Concerns

One commenter, representing the City of Apache Junction, opposed the proposal to modify the Phoenix Class B airspace area eastward over the city. This commenter stated that the proposed modification would create noise from lower flying aircraft, jeopardize air safety, adversely effect wilderness areas and the FAA has not provided the city adequate information pertaining to the proposed changes.

The FAA disagrees with the statement of this commenter. Currently, the City of Apache Junction, as charted on aeronautical charts, is located in an area classified as uncontrolled, or ''Class E airspace.'' Class E airspace may be used by GA VFR aircraft as well as commercial airlines operating IFR. The modification establishes Class B airspace over the City of Apache Junction with a floor of 8,000 feet MSL. As commercial IFR traffic is currently, and will continue to be, vectored over Apache Junction at or above 8,000 feet MSL, the proposed modification has no potential to affect the environment in the vicinity of Apache Junction.

Once the airspace is designated as Class B, GA traffic can either circumnavigate the area or use standard procedures to enter the Class B airspace area. Class B airspace, formerly known as a Terminal Control Area, exists to provide a high degree of control over air traffic associated with high density airports, to reduce the potential for midair collisions. Accordingly, aircraft equipment is subject to certain minima, and permission must be obtained to enter Class B airspace. While operating within Class B airspace, every aircraft is required to have an operational transponder and the pilot is required to maintain two-way communication with, and follow the instructions issued by, air traffic controllers. Controllers are responsible for the separation of every aircraft in the Class B airspace area, whether the aircraft is operating IFR or VFR.

Establishing the Phoenix Class B airspace area floor at 8,000 feet MSL in this area will assure adequate separation and maneuvering airspace, which enhances aviation safety between IFR and VFR operations. The FAA believes IFR aircraft operations above 8,000 feet MSL will not impact any wilderness areas or the well-being of the residents of Apache Junction. Adequate information has been provided to evaluate potential safety benefits and potential environmental impact during the rulemaking process.

Several commenters expressed concern that the proposed modifications would allow aircraft to fly at lower altitudes over residential areas, causing an increase in noise levels, and decreasing property values. Additionally, some commenters expressed concern that the expansion of the Class B airspace area would have a detrimental effect upon the future environment of the area, including the Superstition Mountains. They questioned whether an Environmental Impact Statement was required as part of this action.

The modifications herein will not change or lower the altitude at which aircraft operate, nor will they change existing aircraft departure and arrival routes, flight tracks, and operations. Under the final rule, except in two subareas H and I, Class B airspace area would simply be expanded horizontally to provide additional safety through

adherence to instrument flight rules. The airspace will be expanded vertically by lowering the floor of IFR operations in subareas H and I to enhance safety by assuring a minimum 1,000 feet of separation between approximately 8,000 feet MSL and above, and GA operations. In the modification to subareas H and I, GA would not be allowed to operate above 7,000 feet MSL. The operational and noise impact of eliminating operations by GA aircraft above 7,000 feet MSL in subareas H and I is expected to be minimal.

As published in the Aeronautical Information Manual (AIM), the FAA recommends that aircraft maintain a minimum altitude of 2,000 feet above the surface to minimize adverse impact upon the environment. Existing operations will continue in accordance with this recommendation to the extent feasible. Further, aircraft operations in the Phoenix Class B airspace area in the vicinity of the Superstition Mountains will be operating at or above 8,000 feet MSL.

As explained in detail in the Environmental Review section and for the reasons stated above, the FAA has determined that the proposed final rule qualifies for categorical exclusion from environmental review under FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts.

Satellite Airport Operations

Some commenters expressed concerns that the proposed modifications would negatively impact airspace users in the vicinity of Williams Gateway (IWA) airport and Falcon Field (FFZ) airport. Two commenters, representing helicopter operations state that the reconfiguration of airspace east and southeast of FFZ will have an economic impact upon their business.

The FAA does not agree with these commenters. Currently, aircraft, including helicopters, operate in the vicinity due east of FFZ, operate below the 4,000 (Area D) and 8,000 (Area H) foot MSL floors of the Phoenix Class B airspace area, or navigate southeast and into Class E airspace.

As modified, those pilots who elect to operate in the vicinity southeast of FFZ and above IWA may navigate below the floor of the Areas D at 4,000 feet MSL. However, the eastern boundary of area D Area D is reconfigured, and therefore provides additional maneuvering airspace. Though the current Class E airspace is being reclassified as Class B airspace, the establishment of Areas J and K with floors of 5,000, and 8,000 feet MSL, respectively, allows adequate airspace for users to operate below the Phoenix Class B airspace area or navigate a minimal distance to reach and enter Class E airspace. Therefore, the FAA believes this action would have no impact upon users of the airspace operating below the floor of the Phoenix Class B airspace area in the vicinity of southeast of FFZ. In consideration of the overall safety benefits, provided by ATC system, (e.g. separation from other aircraft, traffic advisories, etc,) the FAA believes this action to be in the best interest of the aviation community.

Airspace Reconfiguration

Many commenters were of the opinion that the eastward expansion of the airspace is unnecessary because the existing design has worked well for many years. Two commenters compared the Phoenix Class B airspace area with other Class B airspace areas and concluded that the Phoenix Class B airspace area should not be expanded.

The FAA does not agree with these comments. The size and design of each Class B airspace area is unique and dependent upon the amount of airspace necessary to segregate certain aircraft operations into and out of busy terminal areas. Aircraft operations have increased dramatically in the Phoenix Class B airspace area since it was established in 1990. Under the present configuration, aircraft operations east of Phoenix, and in the vicinity of IWA may, because of traffic density, overflow or, when necessary, may be vectored temporarily out of the Phoenix Class B airspace area. This creates the potential for conflict between controlled IFR and noncontrolled VFR aircraft operations. Reclassifying certain Class E airspace to Class B airspace in the vicinity of IWA provides additional airspace to ensure the safety of those aircraft. Reconfiguring the current airspace eliminates potential conflict between VFR and IFR aircraft operations and allows users reasonable access to navigable airspace.

Many commenters opposed the modification of the Phoenix Class B airspace area because they believe changes to flight tracks or airways were to be incorporated in the proposed action.

This rulemaking effort is specifically for the modification of the Phoenix Class B airspace area. There are no airway or flight pattern changes associated with this action.

The Primary Airport Surface Area (Area A)

One comment, while supporting the modification, questioned whether the instrument landing system (ILS) approach procedure from the east should be revised.

The FAA considered modifying the ILS approach, along with reconfiguring Area C. However, the FAA determined that a modification of surface Area A is the preferred option. Presently, aircraft arriving from the east conducting the Runway 26R ILS approach, exit and reenter the Class B airspace area, increasing the potential for an incident or accident between IFR and VFR aircraft operating outside of, but in the vicinity of, the existing Class B airspace area.

Prior to the establishment of the Runway 26R ILS procedure, Area A was considered to be sufficient. However, it was discovered that, due to the angle of the glideslope, aircraft following the approach procedure while descending, would exit through the 3,000-foot MSL floor of Area C and reenter through the eastern boundary of the Phoenix Class B airspace area, Area A. The relocation of the eastern boundary of Area A, by 1-NM to the east, eliminates this safety concern and alleviates the necessity to redesign the ILS approach procedure.

Modification of Areas H and I

Several commenters stated that the proposed modification of Area H north of Phoenix International Airport would have a negative impact on general aviation and glider operations from the Pleasant Valley Sailport.

The FAA does not agree with these comments. The FAA believes that the modification of Area H has no effect upon glider operations out of the sailport. Those glider operators that require an altitude greater than 7,000 feet MSL, have the option of remaining outside of, or obtaining ATC approval to operate in, the Class B airspace area. In addition, lowering the floor in Areas H and I to 7000 feet MSL is necessary due to the increase in IFR aircraft operations to and from Phoenix International Airport. The number of aircraft operations is expected to continue increasing significantly. Lowering the floor by 1,000 feet MSL increases the efficiency of traffic management because it allows additional transitional altitudes to be used for separating arrival and departure traffic and allows other users access to airspace to maneuvering or navigate below the floor of the Phoenix Class B airspace area.

Special Use Airspace (SUA)

One commenter expressed opposition to the proposed modification, recommending that the FAA retain the military airspace over the Rocky Mountains and move the air highway expansion north.

The FAA interprets the commenters objections and statements regarding

''highway'' expansion, to mean airspace reconfiguration. To improve the efficiency of aircraft operations, the FAA determined that an expansion of the Class B airspace area to the north was not necessary. The modifications contained in this rule include only that airspace necessary to contain the operations of participating aircraft in the Phoenix area and no modification to the SUA was proposed or planned.

Corrections

Several commenters reported that the NPRM contained several technical errors published in the NPRM.

The field elevation of Phoenix International Airport noted in the NPRM was ''132'' feet. The field elevation is corrected in this rule to read ''1,132'' feet.

The eastern boundary of Area A would be moved ''approximately 2 NM.'' The approximated distance, as verified by NOAA is less than 1 NM. The distance is corrected in this rule to read ''approximately 1 NM''.

Additionally, the NPRM inadvertently omitted addressing the change of the navigational aid (NAVAID) from the Phoenix instrument landing system/distance measuring equipment (ILS/DME) to the Phoenix very high frequency omnidirectional range tactical air navigation (VORTAC). Use of the Phoenix VORTAC will shift the arc boundaries and, therefore, the regulated airspace along the arcs the Phoenix Class B airspace area westward, but less than 1 NM. The FAA determined that this shift in the arc boundaries causes little, if any, impact on users of the navigable airspace in these areas. In addition, use of the Phoenix VORTAC assists general aviation pilots in identifying certain boundaries of the Phoenix Class B airspace area.

The Rule

This amendment to 14 CFR part 71 modifies the Phoenix Class B airspace area as depicted on the attached chart. Specifically, this action reconfigures Area A by expanding the existing eastern boundary to the east; reconfigures the existing Area B west of Phoenix International Airport; reconfigures Area D east of Phoenix International airport; establishes Areas J and K; and raises or lowers the floors of several existing or modified areas. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and improve the management of air traffic operations into, out of, and through the Phoenix Class B airspace area while accommodating the concerns of airspace users.

The modification of the Phoenix Class B airspace area will become effective on November 5, 1998. In order to avoid pilot confusion and to make pilots immediately aware of the revised legal description of the Phoenix Class B airspace area, the FAA finds that good cause exists, pursuant to 5 U.S.C. (d), for making this amendment effective in less than 30 days. The November 5, 1998, effective date corresponds with a scheduled publication date for the appropriate aeronautical charts. The FAA has disseminated information regarding the revised legal description of the Phoenix Class B airspace area via public meetings and publication of the NPRM to ensure that pilots and airspace users are advised of the modifications. The FAA's Western Pacific Regional Office distributed Letters to Airmen that advertised the revised description of the airspace area. The Phoenix VFR Terminal Area Chart and Phoenix Sectional Aeronautical Chart will be published on November 5, 1998, and will reflect this rulemaking action.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR, section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

The existing Area A is reconfigured by expanding its eastern boundary approximately 1 NM east to ensure that aircraft operations into the primary airport are contained within the Phoenix Class B airspace area. The existing Area B is modified by establishing a boundary line running north to south on 99th Avenue to provide GA operators transiting west of Phoenix greater flexibility, thereby reducing airspace incursions in this area. In this reconfiguration, Area B remains at 3,000 feet MSL; however, the western area will be raised to merge with the existing 4,000 feet MSL of Area D.

The airspace east of Phoenix has been reconfigured to contain high performance aircraft within the Phoenix Class B airspace area. This modification expands the Class B airspace area to the east-southeast approximately 15 NM over the Williams Gateway Airport, formerly known as Williams Air Force Base. This expansion establishes Areas J and K, with floors of 5,000 and 8,000 feet MSL, respectively. This modification is consistent with the FAA's policy of using only the minimum amount of airspace necessary to contain Class B operations. This modification also provides sufficient airspace for GA operations near or below the Class B airspace area east of Phoenix. The existing floors of Areas H to the north and Area I to the south are lowered by 1,000 feet. Establishing these floors at 7,000 feet MSL provides additional protected airspace because of the increase in aircraft arriving and departing the Phoenix Class B airspace area. Modification of Areas H and I improves airspace management by enabling a more efficient flow of traffic which enhances safety for IFR and VFR aircraft operations. The floor, established at 7,000 feet MSL, allows airspace for other users of the navigable airspace to operate below the floor of the Class B airspace area, or those pilots who elect to operate in these areas, may use standard procedures to enter the Phoenix Class B airspace area.

Areas E, F, G, and H are not changed except as previously mentioned concerning the NAVAID change from the Phoenix ILS/DME to the Phoenix VORTAC. This change creates a minor adjustment of the Phoenix Class B airspace area westward along the associated arc boundaries of less than 1 NM.

Area J, with the floor established at 5,000 feet MSL, is established between the PXR VORTAC 15–20 DME arcs and abuts Area E to the north and Area F to the south. Establishment of area J provides additional protected airspace to support IFR arrivals and departures out of and into the Phoenix International airport from VFR aircraft operations to the east of the airport.

Area K to the east is reconfigured and aligned with the adjacent Area I to the south. This configuration allows for more efficient transition of aircraft into and out of the Phoenix Class B airspace area, and provides protected airspace for operations into and out of the IWA airport. Expanding the southeastern area to encompass this airspace east of IWA provides Class B airspace area service to high-performance aircraft transiting to and from the en route structure.

Environmental Review

After careful consideration, the FAA has determined that expansion of the Phoenix Class B airspace area, pursuant to 14 CFR part 71, qualifies for categorical exclusion from environmental review under FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, Appendix 3, Air Traffic Environmental Responsibilities, paragraph 4(c). This extension of the Class B airspace area horizontally and, in subareas H and I, vertically, to provide additional safety through adherence to instrument flight

rules, will not change aircraft departure, arrival routes, flight tracks, or operations in the area. In subareas H and I, although the floor for IFR operations and the ceiling for VFR traffic would be lowered from 8,000 to 7,000 feet MSL, IFR arrival and departure routes and flight patterns will remain the same. The lowered floor will assure a minimum of 1,000 feet of vertical separation between continued IFR operations at approximately 8,000 feet MSL, and GA traffic. Based upon this, and in consideration of other factors, there are no extraordinary circumstances that warrant preparation of an environmental assessment.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Final Rule: (1) will generate benefits that justify its minimal costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Costs

The FAA has determined that modifying the Phoenix Class B airspace area will enhance aviation safety and operational efficiency. This FAA determination is based on a change in operations complexity in some of the existing subareas. The FAA contends the modification of the airspace area will impose minimal, if any, cost to either the agency or aircraft operators. In addition, the FAA has determined that the modified airspace area will impose minimal, if any, cost to operators that circumnavigate the area.

The final rule will not impose any additional administrative costs on the FAA for either personnel or equipment. The FAA has determined that any additional workload created by the final rule will be absorbed with existing personnel and equipment already in place at Phoenix Sky Harbor International Airport. The revision of aeronautical charts to reflect changes in the airspace area are considered a part of the normal periodic updating of the charts. The FAA currently revises aeronautical charts every six months to reflect changes in the airspace environment. The FAA does not expect to incur any additional charting cost as a result of the modification of the Class B airspace area.

The FAA has determined through statistical analysis that most aircraft operating in the modified and expanded Class B airspace area already have two-way radio communications capability and Mode C transponders. Therefore, the FAA has determined this final rule will not impose any additional installation cost for purchasing two-way radios and/or Mode C transponders on a substantial number of operators.

The final rule modifies the current Phoenix Class B airspace area by establishing new sub-areas, by expanding or contracting the lateral boundaries, and by raising or lowering the floors of several of the sub-areas. The final rule will not alter the ceiling of the Class B airspace area, therefore the airspace ceiling will remain constant at 10,000 feet MSL. The FAA has determined that the modifications to the airspace area will require non-participating operators to make only small deviations from their current VFR flight paths north, south and east of Phoenix Sky Harbor International Airport. In addition, the FAA has determined the redesigned floors and lateral boundaries will not reduce aviation safety.

Benefits

The approximate total number of operations at Phoenix Sky Harbor International Airport was 590,000 in 1996, up from 570,000 in 1995 and is projected to increase to 660,000 by the year 2000. Also, passenger enplanements were approximately 14.6 million in 1996, up from 13.5 million in 1995 and are projected to increase to 18.1 million by the year 2000.

The FAA has determined that this final rule will enhance operational safety by lowering the potential risk of midair collisions, given the projected increase of total operations and passenger enplanements at Phoenix Sky Harbor International Airport. The final rule will improve aviation safety as well as air traffic flow in the Phoenix Class B airspace area by simplifying the airspace area boundaries and reducing the possibility of pilot confusion.

The modification of the Phoenix, AZ Class B airspace area will enhance aviation safety and improve operational efficiency in those sub-areas where aircraft are approaching or departing from Phoenix Sky Harbor International Airport. In view of the minimal, if any, cost of compliance and the benefits of enhanced aviation safety and improved operational efficiency, the FAA has determined that this final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Only those unscheduled aircraft operators without the capability to operate under IFR conditions will be potentially impacted by this final rule. The FAA has determined that all unscheduled air taxi operators are already equipped to operate under IFR conditions. These operators regularly fly in airports where radar approach control services have been established such as the Phoenix Class B airspace area. The FAA anticipates that flight training schools in the Phoenix area will continue to operate below the floor of the modified Class B airspace area without any difficulty. Thus, the FAA does not anticipate any adverse impacts

to occur as a result of the modified Class B airspace area.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will not have international trade ramifications because it is a domestic airspace matter. The modification of Class B airspace area will only affect U.S. terminal airspace operating procedures at and in the vicinity of Phoenix, AZ. This final rule will not impose costs on aircraft operators or aircraft manufacturers in the United States or foreign countries.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, (of $100 million adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP AZ B Phoenix, AZ [Revised]

Phoenix Sky Harbor International Airport
(Primary Airport)
(lat. 33°26′10″N., long. 112°00′34″W.)
Phoenix VORTAC
(lat. 33°25′59″N., long. 111°58′13″W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of 51st Avenue and Camelback Road (lat. 33°30′34″N., long. 112°10′08″W.), extending east along Camelback Road to the intersection of Camelback Road and Dobson Road (lat. 33°30′07″N., long. 111°52′26″W.), thence south on Dobson Road to the intersection of Dobson Road and Guadalupe Road (lat. 33°21′49″N., long. 111°52′35″W.), thence west on Guadalupe Road to the intersection of Guadalupe Road and Interstate 10 (lat. 33°21′50″N., long. 111°58′08″W.), thence direct to lat. 33°21′48″N., long. 112°06′30″W., thence west on Guadalupe Road to the intersection of Guadalupe Road and 51st Avenue (lat. 33°21′46″N., long. 112°10′09″W.), thence north on 51st Avenue to the point of beginning.

Area B. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of 99th Avenue and Camelback Road (lat. 33°30′29″N., long. 112°16′22″W.), thence east on Camelback Road to the intersection of Camelback Road and 51st Avenue (lat. 33°30′34″N., long. 112°10′08″W.), thence south on 51st Avenue to the intersection of 51st Avenue and Guadalupe Road (lat. 33°21′46″N., long. 112°10′09″W.), thence direct to lat. 33°21′48″N., long. 112°06′30″W., thence south direct to lat. 33°18′18″N., long. 112°06′30″W., thence west on Chandler Boulevard to the intersection of Chandler Boulevard and the Gila River (lat. 33°18′18″N., long. 112°12′03″W.), thence northwest along the Gila River to the intersection of the Gila River and 99th Avenue, (lat. 33°19′55″N., long. 112°16′21″W.), thence north along the extension of 99th Avenue to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of Guadalupe Road and Interstate 10 (lat. 33°21′50″N., long. 111°58′08″W.), thence south on Interstate 10 to the intersection of Interstate 10 and Chandler Boulevard (lat. 33°18′19″N., long. 111°58′21″W.), thence east on Chandler Boulevard to the intersection of Gilbert Road and Chandler Boulevard (lat. 33°18′19″N., long. 111°47′22″W.), thence north on Gilbert Road to the intersection of Indian Bend Road (lat. 33°32′20″N., long. 111°47′23″W.), thence west on Indian Bend Road to the intersection of Indian Bend Road and Pima/Price Road (lat. 33°32′18″N., long. 111°53′29″W.), thence south on Pima/Price Road to the intersection of Pima/Price Road and Camelback Road (lat. 33°30′07″N, long. 111(53′29″W.), thence east on Camelback Road to Dobson Road (lat. 33°30′07″N, long. 111(52′26″W.), thence south on Dobson Road to the intersection of Dobson Road and Guadalupe Road (lat. 33°21′49″N., long. 111°52′35″W.), thence west on Guadalupe Road to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of Cactus Road and the 15-mile arc of the Phoenix VORTAC (lat. 33°35′35″N., long. 111°44°29″W.), thence clockwise along the 15-mile arc of the Phoenix VORTAC to the intersection of the 15-mile arc of the Phoenix VORTAC and Riggs Road (lat. 33°13′02″N., long. 111°49′07″W.), thence west along Riggs Road to the intersection of the Gila River and Valley Road (lat. 33°13′10″N., long. 122°09′58″W.), thence northwest along the Gila River to the intersection of the Gila River and Chandler Boulevard (lat. 33°18′18″N., long. 112°12′03″W.), thence east to lat. 33°18′18″N., long. 112°06′30″W., thence north to lat. 33°21′48″N., long. 112°06′30″W., thence east to the intersection of Guadalupe Road and Interstate 10 (lat. 33°21′50″N., long. 111°58′08″W.), thence south on Interstate 10 to the intersection of Interstate 10 and Chandler Boulevard (lat. 33°18′19″N., long. 111°58′21′16″W.), thence east along Chandler Boulevard to the intersection of Chandler Boulevard and Gilbert Road (lat. 33°18′18″N., long.111°47′22″W.), thence north along Gilbert Road to the intersection of Indian Bend Road (lat. 33°32′20″N., long. 111°47′23″W.), thence west along Indian Bend Road to the intersection of Pima/Price Road (lat. 33°32′18″N., long. 111°53′29″W.), thence south along Pima/Price Road to the intersection of Pima/Price Road and

Camelback Road (lat. 33°30′07″N., long. 111°53′29″W.), thence west along Camelback Road to the intersection of 99th Avenue (lat. 33°30′29″N., long. 112°16′22″W.), thence south on 99th Avenue to the intersection of 99th Avenue and the Gila River (lat. 33°19′55″N., long. 112°16′21″W.), thence southeast along the Gila River to the intersection of the Gila River and Chandler Boulevard (lat. 33°18′18″N., long. 112°12′03″W.), thence west along Chandler Boulevard to the intersection of an extension of Chandler Boulevard and Litchfield Road (lat. 33°18′18″N., long. 112°21′29″W.), thence north along Litchfield Road to the intersection of Litchfield Road and Camelback Road (lat. 33°30′29″N., long. 112°21′29″W.), thence east along Camelback Road to lat. 33°30′30″N., long. 112°19′23″W., thence direct to lat. 33°35′34″N., long. 112°13′55″W., thence direct to lat. 33°36′35″N., long. 112°13′38″W., thence east along Thunderbird Road to the intersection of Thunderbird Road and Cactus Road to the point of the beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Phoenix VORTAC 20-mile arc and lat. 33°41′41″N., long. 112°13′05″W., thence clockwise along the 20-mile arc of the Phoenix VORTAC to intersection of the Phoenix VORTAC 20-mile arc and Cactus Road (lat. 33°35′35″N., long. 111°37′13″W.), thence west on Cactus Road, to the intersection of Cactus Road and Thunderbird Road (lat. 33°36′35″N., long. 112°13′38″W.), thence direct to the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of Riggs Road and the 20-mile arc of the Phoenix VORTAC (lat. 33°12′58″N., long. 111°40′04″W.), thence clockwise along the 20-mile arc of the Phoenix VORTAC to the intersection of the 20-mile arc of the Phoenix VORTAC and Valley Road (lat. 33°07′58″N., long. 112°08′40″W.), thence north along Valley Road to the intersection of Valley Road, Riggs Road and the Gila River (lat. 33°13′10″N., long. 112°09′58″W.), thence east along Riggs Road to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 25-mile arc of the Phoenix VORTAC and Camelback Road (lat. 33°30′30″N., long. 112°27′37″W.), thence east on Camelback Road to the intersection of Camelback Road and Litchfield Road (lat. 33°30′29″N., long. 112°21′29″W.), thence south on Litchfield Road to the intersection of Litchfield Road and Chandler Boulevard (lat. 33°18′18″N., long. 112°21′29″W.), thence west along Chandler Boulevard to the intersection of the 25-mile arc of the Phoenix VORTAC (lat. 33°18′10″N., long. 112°26′34″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the point of beginning.

Area H. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 33°46′13″N., long. 112°15′51″W., on the 25-mile arc of the Phoenix VORTAC, thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and Interstate 17 (lat. 33°49′30″N., long. 112°08′37″W.), thence south along Interstate 17 to the intersection of Interstate 17 and the 20-mile arc of the Phoenix VORTAC (lat. 33°44′31″N., long. 112°07′18″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to lat. 33°41′41″N., long. 112°13′05″W., thence direct to the point of beginning); and that airspace beginning at the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 017° radial (lat. 33°45′08″N., long. 111°51′12″W.), thence north along the Phoenix VORTAC 017° radial to the intersection of the Phoenix VORTAC 017° radial and the 25-mile arc of the Phoenix VORTAC (lat. 33°49′56″N., long. 111°49′26″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 037° radial (lat. 33°45′58″N., long. 111°40′10″W.), thence southwest along the Phoenix VORTAC 037° radial to the intersection of the Phoenix VORTAC 037° radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°41′58″N., long. 111°43′47″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to the point of beginning.

Area I. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 127° radial (lat. 33°13′54″N., long. 111°39′10″W.), thence southeast along the Phoenix VORTAC 127° radial to the intersection of the Phoenix VORTAC 127° radial and the 25-mile arc of the Phoenix VORTAC (lat. 33°10′52″N., long. 111°34′25″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 180° radial (lat. 33°00′56″N., long. 111°58′13″W.), thence north along the Phoenix VORTAC 180° radial to the intersection of the Phoenix VORTAC 180° radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°05′57″N., long. 111°58′13″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to the point of beginning.

Area J. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 15-mile arc of the Phoenix VORTAC and lat. 33°35′39″N., long. 111°44′29″W., thence east to the intersection of the Phoenix VORTAC 20 mile arc (lat. 33°35′35″N., long. 111°37′13″W.), thence clockwise along the Phoenix 20-mile arc to the intersection of the Phoenix VORTAC 20-mile arc and Riggs Road (lat. 33°12′58″N., long. 111°40′04″W.), thence west to the intersection of Riggs Road and the Phoenix VORTAC 15-mile arc (lat. 33°13′02″N., long. 111°49′07″W.), thence counterclockwise along the Phoenix VORTAC 15-mile arc to the point of the beginning.

Area K. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 20-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 037° radial (lat. 33°41′58″N., long. 111°43’47’’W.), thence northeast along the Phoenix VORTAC 037° radial to the intersection of the Phoenix VORTAC 037° radial and the 25-mile arc of the Phoenix VORTAC (lat. 33°45′58″N., long. 111°40′10″W.), thence clockwise along the 25-mile arc of the Phoenix VORTAC to the intersection of the 25-mile arc of the Phoenix VORTAC and the Phoenix VORTAC 127° radial (lat. 33°10′52″N., long. 111°34′25″W.), thence northwest along the Phoenix VORTAC 127° radial to the intersection of the Phoenix VORTAC 127° radial and the 20-mile arc of the Phoenix VORTAC (lat. 33°13′54″N., long. 111°39′10″W.), thence counterclockwise along the 20-mile arc of the Phoenix VORTAC to the point of beginning.

* * * * *

Issued in Washington, DC, on October 26, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

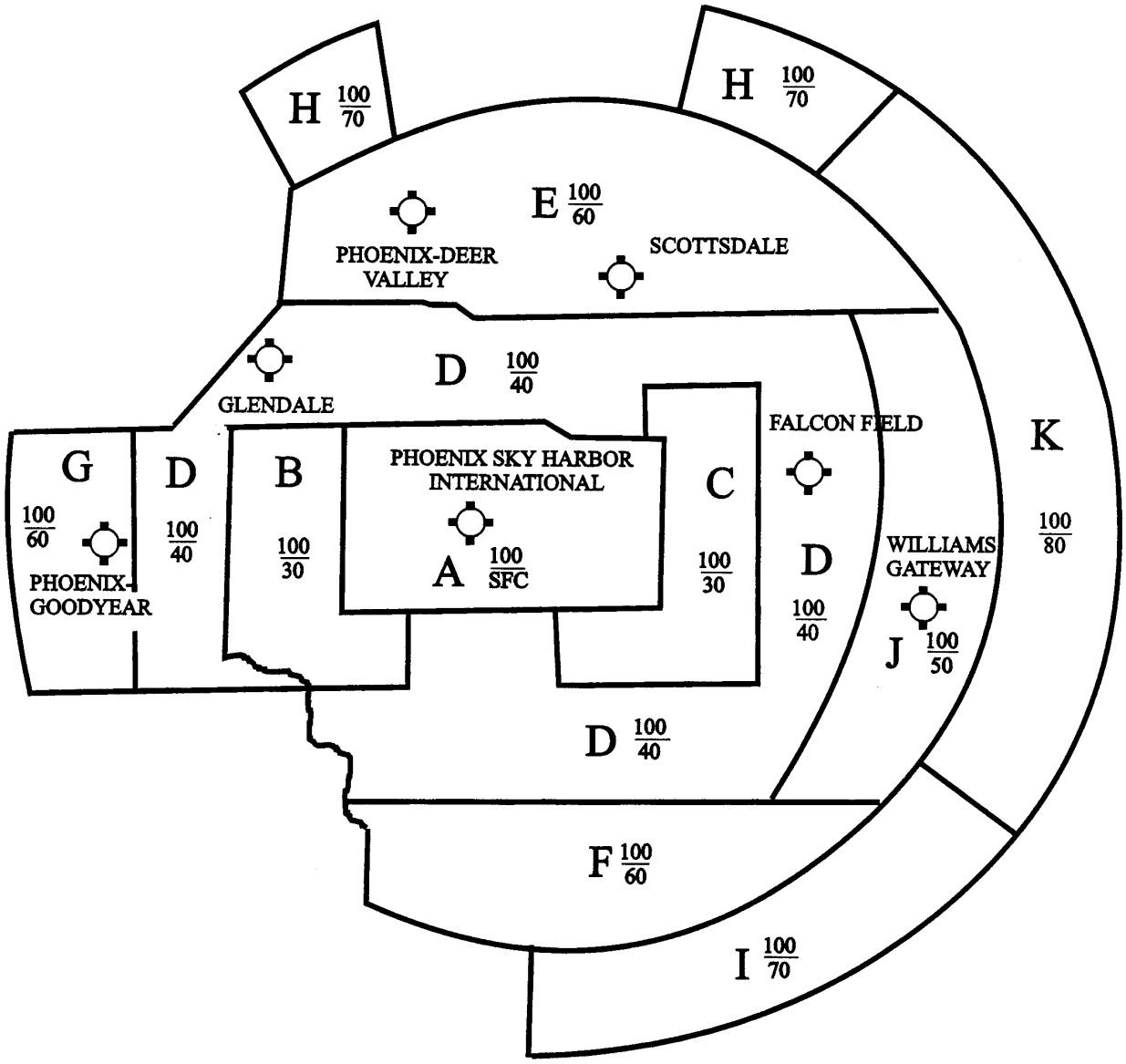
Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Phoenix, AZ, Class B Airspace Area

BILLING CODE 4910–13–P

PHOENIX CLASS B AIRSPACE AREA

FIELD ELEVATION 1132 FEET
(NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Air Traffic Publications
ATA-10

[FR Doc. 98–29148 Filed 10–29–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–15]

Amendment of Class E Airspace; Riverton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action changes the Riverton, WY, Class E surface airspace legal description from part-time to continuous. The FAA has commissioned an Automated Surface Observing System (ASOS) at the Riverton Regional Airport which makes the airport eligible for continuous Class E surface airspace.

DATES: Effective 0901 UTC, 28 January 1999.

Comments for inclusion in the Rules Docket must be received on or before November 30, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ANM–520, Federal Aviation Administration, Docket Number 98–ANM–15, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–15, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

The Riverton, WY, Class E surface airspace was originally effective on a part-time basis. The commissioning of the ASOS coupled with the need for a continuous surface area exist for the Riverton Regional Airport. This amendment changes the legal airspace description from part-time to continuous, thereby reflecting actual desired operations. The intended effect of this rule is designed to provide for the safe and efficient use of the navigable airspace at Riverton, WY. The boundaries of the airspace remain the same.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1988, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a docket in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions are extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ANM–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * * * *

ANM WY E2 Riverton, WY [Revised]

Riverton Regional Airport, WY
(Lat. 43°03′51″N, Long. 108°27′35″W)
Riverton VOR/DME
(Lat. 43°03′57″N, Long. 108°27′20″W)

Within a 4.2-mile radius of the Riverton Regional Airport, and within 1.8 miles each side of the Riverton VOR/DME, 291° radial extending from the 4.2-mile radius to 7 miles west of the VOR/DME, and within 2.7 miles each side of the Riverton VOR/DME 123° radial extending from the 4.2-mile radius to 7 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on October 19, 1998.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–29128 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Two-Part Documents for Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On March 30, 1998, the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') published for comment the National Futures Association's (''NFA'') Compliance Rule 2–35 subsections (a) through (c)[1] (''the Rule''), its related Interpretive Notice, and proposed amendments to Commission rules concerning the use of two-part documents for commodity pools (collectively ''the Proposal''). The comment period for the Proposal was 30 days and closed on April 29, 1998. The Commission has carefully considered the comments received on the Proposal and, based upon its review of these comments and its consideration of the Rule, the Interpretive Notice and the proposed Commission rule amendments, is approving the Proposal pursuant to Section 17(j) of the Commodity Exchange Act[2] (''Act'') subject to the revisions discussed herein.

EFFECTIVE DATE: April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Leanna L. Morris, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5466.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Commission Rule 4.21,[3] no commodity pool operator (''CPO'') registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in Commission Rule 4.24.[4] NFA and the Commission have worked to identify ways in which the required disclosures could be more succinct and clear, while adhering to the objective of protecting pool participants by ensuring that participants are informed about the material facts concerning the pool before committing funds.

Over the years, however, pool Disclosure Documents have become more voluminous and more difficult to understand. In an effort to address concerns that essential information is not reaching investors in a form that can be easily understood, NFA submitted NFA Compliance Rule 2–35 subsections (a) through (c) and its related Interpretive Notice for Commission approval. The purpose of the Rule is to provide potential investors with material information concerning the commodity pool in a concise, readable format prior to their deciding whether to invest in a commodity pool.

The comment period for the Proposal ended on April 29, 1998. The Commission received seven comment letters. The commenters consisted of: one self-regulatory organization; one registered futures commission merchant (''FCM''); one formerly registered associated person of an FCM; one law firm; one futures industry trade association; one bar association; and one academician.

All commenters supported the rulemaking in general. Some commenters, however, advocated various changes to the proposed rules. The Commission has carefully considered the comments received and, based upon its review of the comments and its own consideration of the Rule, the Interpretive Notice and the proposed Commission rule amendments, has determined to adopt the Proposal, subject to the modifications discussed herein. Comments received on the Proposal are discussed below.

II. Transitional Provision

To facilitate the transition to compliance with the Rule and the Commission rule amendments, NFA and the Commission have determined that the revisions being announced today will become effective six months from the date hereof, but Disclosure Documents may be prepared, filed and used in accordance with the revised rules prior to the effective date. For pools that are continuously offered, amendment of the Disclosure Document is not required solely due to the rule revisions announced herein, and operators of such pools may make conforming changes as part of their next regular update in accordance with CommissionRule 4.26.

III. Discussion

A. Delivery of a Two-Part Document

The Rule requires that the CPO of a commodity pool required to register its securities under the Securities Act of 1933 (''public pool'') deliver a two-part document. The first part of the document must be the Disclosure Document required by Commission Rule 4.21(a), written using plain English principles[5] and limited to specific

[1] NFA has since submitted new subsections (d) and (e) to NFA Rule 2–35, which are not related to the use of a two-part document. NFA Rule 2–35 subsections (d) and (e) will be reviewed by the Commission as a separate submission pursuant to § 17(j) of the Commodity Exchange Act.

[2] 7 U.S.C. § 21(j) (1994).

[3] Commission rules referred to herein can be found at 17 CFR Ch. I (1998).

[4] Commission Rule 4.24 also contains a proviso that, where the prospective participant is an accredited investor as defined in 17 CFR 230.501(a), a notice of intended offering and statement of the terms of the intended offering may be provided prior to delivery of a Disclosure Document, subject to compliance with the rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

[5] NFA's Interpretive Notice to Rule 2–35 provides guidance on what is meant by the use of ''plain English principles.'' Such principles include: using active voice; using short sentences and paragraphs; breaking up the document into short sections; using titles and sub-titles that specifically describe the contents of each section; using words that are definite, concrete, and part of everyday language;

disclosure information, as discussed in detail below. The second part is the Statement of Additional Information (''SAI''), which may include information that is not in the Disclosure Document, provided that the information is not misleading or otherwise inconsistent with applicable statutes, rules or regulations.

The CPO of a commodity pool that is not required to register its securities under the Securities Act of 1933 (''private pool'')[6] must prepare and distribute a Disclosure Document and may prepare and distribute an SAI, but is not required to do so. If the CPO of a private pool chooses to prepare an SAI, it may be bound together with the Disclosure Document, so long as the Disclosure Document comes first. If the CPO of a private pool binds the SAI separately, the CPO is not required to provide it to a prospective participant unless requested by the prospective participant.

One commenter stated that the use of the two-part format should be optional for CPOs of private pools. The Commission notes that the intent of the Rule is to provide all investors with a more concise and readable document. Accordingly, it would defeat the purpose of the Rule if CPOs of private pools were allowed to choose whether to adhere to the format and disclosure requirements of the Rule. As discussed in detail below, if the CPO of a private pool chooses not to disclose supplemental information as defined in Commission Rule 4.24(v), the CPO needs to prepare and distribute only the Disclosure Document containing the information required by the Rule and does not need to prepare a separate SAI. Also, CPOs of private pools have the choice of binding the SAI to the Disclosure Document or separately providing the SAI upon request of the prospective participant. Accordingly, the Commission does not believe that CPOs of private pools should be given the option of choosing between the new two-part format or the previous disclosure format of Part 4 of the Commission's rules.

B. Information Required To Be in the Disclosure Document

The Rule provides that the Disclosure Document required by Commission Rule 4.21(a) be clear and concise, written using plain English principles, and limited to the information required by Commission Rules 4.24 and 4.25, provided, however, that the CPO may provide the performance information required by Commission Rule 4.25(c)(5) in the SAI. It should be noted that, if the CPO does not prepare an SAI, the performance information required under Commission Rule 4.25(c)(5) must be included in the Disclosure Document. The Disclosure Document must also include any other information necessary to understand the fundamental characteristics of the pool or to keep the Disclosure Document from being misleading.

In support of the Rule, the Commission has amended Commission Rule 4.25(c)(5) to permit the summary description of the performance history of the CTAs and investee pools for which performance is not required to be disclosed pursuant to Commission Rules 4.25(c)(3) and 4.25(c)(4) (hereinafter ''non-major CTAs'' and ''non-major investee pools'')[7] to be provided in the SAI.

The Rule originally proposed also permitting the CPO to provide the monthly rate of return information of the offered pool, required under Commission Rule 4.25(a)(1)(i)(H), in the SAI, separated from the remainder of the required performance capsule. One commenter stated, however, that the monthly performance information of the offered pool is too crucial to the evaluation of a CPO to permit the information to be placed in the SAI, where it may be missed or overlooked. The commenter stated that the ''[r]eliance on a single yearly rate of return will allow a CPO to better disguise wildly aberrant performance of the pool.''

The Commission has considered the Proposal and has concluded that the monthly rate of return information of the offered pool is necessary to disclose the volatility of the pool to investors. The Commission does not believe that such material information concerning the pool's performance should be separated between two parts of a Disclosure Document. Thus, NFA has revised its Rule by deleting that specific provision from the final rule. Commission Rule 4.25(a)(2)(i) also will not be revised as originally proposed. Accordingly, the offered pool's monthly rate of return information must be provided in the first part of a two-part document in the performance capsule required by Commission Rule 4.25.

C. Commission Rule 4.24(v)—Supplemental Information

The Rule provides that the Disclosure Document must be limited to and include all of the required information of Commission Rules 4.24 and 4.25, with the noted exception that the summary performance information required by Commission Rule 4.25(c)(5) may be provided in an SAI if one is prepared. Accordingly, Commission Rule 4.24(v) has been revised to require that supplemental information, which is not required information[8] be contained only in the second part of a two-part document. Such information may not be presented in the Disclosure Document.

Several commenters stated that the provisions should not be so restrictive on what is allowed to be included in the Disclosure Document. They maintained that, because of the varying structure and objectives of each commodity pool, discretion should be provided to CPOs in deciding what information to include in the Disclosure Document. For example, some CPOs may want to include the limited partnership agreement in the Disclosure Document. One commenter also stated that CPOs should be permitted to include supplemental performance information with the required performance disclosures, since ''[s]upplemental performance information is often closely related to the required performance disclosures and is often based [on] required performance figures.''

As discussed earlier, the intent behind providing investors with a two-part document is to provide a more understandable Disclosure Document that discloses essential information about a pool in such a way that will assist investors in making informed decisions about whether to invest in the pool. Accordingly, permitting the inclusion of supplemental information, such as a limited partnership agreement or non-required performance information which will increase the length of the Disclosure Document, is not in accordance with the intent of the two-part document format. Such information would be more

avoiding legal jargon and highly technical terms; using glossaries to define technical terms that cannot be avoided; avoiding multiple negatives; and using tables and bullet lists, where appropriate. The Rule does not affect the prescribed statements of Commission Rules 4.24(a) and 4.24(b).

[6] Pursuant to Commission Rule 4.24(d)(3)(i), a ''private pool'' is one that is privately offered pursuant to section 4(2) of the Securities Act of 1933 or pursuant to Regulation D thereunder.

[7] Commission Rule 4.10(d)(5) defines *major investee pool* as any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool. Commission Rule 4.10(i) defines *major commodity trading advisor* as, with respect to a pool, any CTA that is allocated or intended to be allocated at least ten percent of the pool's funds available for commodity interest trading. Accordingly, ''non-major CTAs'' and ''non-major investee pools'' do not meet the ten percent allocation requirement.

[8] Pursuant to Commission Rule 4.24(v), supplemental information is any information that is not required by Commission rules, the antifraud provisions of the Act, other federal or state laws or regulations, rules of a self-regulatory agency or laws of a non-United States jurisdiction.

appropriately placed in the SAI, where it will not distract the investor from the material disclosures contained in the Disclosure Document.

That is not to say that the information provided in the SAI may not be useful information to prospective participants. The SAI may include information that expands upon the required information found in the Disclosure Document, provided that such information is not misleading or inconsistent with applicable statutes, rules or regulations. However, the Commission believes that it is more useful to the typical or average investor to provide essential information concerning an investment in the pool in a shorter and simpler Disclosure Document.

D. Coordination With Other Regulatory Agencies

Several commenters expressed concern over CFTC and Securities and Exchange Commission (''SEC'') coordination of regulatory requirements for publicly offered commodity pools. Specifically, the commenters want the Commission to be certain that the use of the two-part format and plain English requirements will not conflict with any disclosure requirements of the SEC for commodity pools. The commenters urge the CFTC and the SEC to develop uniform standards on the use of two-part documents and plain English principles.

In drafting the Rule and its related Interpretive Notice, NFA considered the disclosure and formatting requirements of the SEC and state securities administrators in an effort to avoid any conflicting regulatory requirements. Accordingly, the Rule provides that any information required by the SEC or state securities administrators to be included in the first part of a two-part document must be included in the Disclosure Document.

The Rule also substantially adopts the ''plain English'' initiative of the SEC.[9] The Rule, however, requires that all parts of the Disclosure Document must be written using plain English principles, rather than limiting the plain English principles to a few specific disclosures, as provided in the SEC's rule.[10] Accordingly, although the Rule expands the use of plain English principles, it does not conflict with the SEC's requirements.

In preparing the related Interpretive Notice, which provides guidance on plain English principles and the disclosures that must be provided in the Disclosure Document, NFA's Subcommittee for the Review of Non-Performance CPO/CTA Disclosure Issues (''Subcommittee'') looked at what was then SEC Form N–1A. SEC Form N–1A sets out the disclosures required to be included in the prospectus and the SAI for mutual funds. The Subcommittee used SEC Form N–1A as a general guide for determining what disclosures the SEC might require to be included in the Disclosure Document for publicly offered commodity pools. Although the SEC has since adopted amendments to SEC Form N–1A,[11] the Commission believes that NFA Compliance Rule 2–35 and its related Interpretive Notice provide sufficient guidance on what disclosures the SEC and state securities administrators will require to be included in the Disclosure Document. Additionally, the Rule and the Interpretive Notice have been written to contain the necessary flexibility to address the disclosure requirements of the SEC and state securities administrators as they may change over time.[12] Accordingly, the Commission believes that any concerns about conflicting regulatory requirements have been addressed adequately. The Commission will continue to coordinate with the SEC on maintaining consistent requirements for publicly offered commodity pools.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect registered CPOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[13] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[14] Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[15] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

There is no burden associated with the amendments to Commission Rules 4.24(v) or 4.25(c)(5) to implement the NFA rule. The group of rules contained in all of Part 4, ''Commodity Pool Operators and Commodity Trading Advisors,'' of which Rules 4.24(v) and 4.25(c)(5) are a part, was approved on September 4, 1998 and assigned OMB control number 3038–0005. The group of rules contained in OMB control number 3038–0005 has the following burden:

Average burden hours per response: 124.65
Number of respondents: 4,624
Frequency of response: On occasion

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.24(v) is amended by revising paragraph (v)(3) introductory text to read as follows:

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[9] See 63 FR 6370 (February 6, 1998).

[10] SEC Rule 421(b), however, does require that the entire prospectus be clear, concise and understandable and requires using the following techniques, among others: present information in clear, concise sections, paragraphs and sentences; avoid legal and highly technical business terminology; avoid legalistic or overly complex presentations that make the substance of the disclosure difficult to understand; and avoid repetitive disclosure that increases the size of the document, but does not enhance the quality of the information.

[11] 63 FR 13916 (March 23, 1998).

[12] The Interpretive Notice to NFA Compliance Rule 2–35 provides: ''The Disclosure Document may also include information required by the Securities and Exchange Commission and state securities administrators. Such information currently includes items such as * * *'' (emphasis added). The language of the Interpretive Notice acknowledges that the disclosures required by the SEC and state securities administrators may differ over time from the requirements as of the date of the Interpretive Notice.

[13] 47 FR 18618–18621 (April 30, 1982).

[14] 47 FR 18619–18620.

[15] Pub. L. 104–13 (May 13, 1995).

§ 4.24 General disclosures required.

* * * * *

(v) * * *

(3) Must be placed as follows, unless otherwise specified by Commission rules, provided that where a two-part document is used pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, all supplemental information must be provided in the second part of the two-part document:

* * * * *

3. Section 4.25 is amended by revising paragraph (c)(5) introductory text to read as follows:

§ 4.25 Performance disclosures.

(c) * * *

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to § 4.25(c)(3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

* * * * *

Dated: October 26, 1998.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–29102 Filed 10–29–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2186–98]

RIN 1105–AA51

National Instant Criminal Background Check System Regulation

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice (DOJ) is publishing a final rule implementing the National Instant Criminal Background Check System (NICS) pursuant to the Brady Handgun Violence Prevention Act (''Brady Act''), to provide notice of the establishment of the NICS, to establish policies and procedures for ensuring the privacy and security of this system, and to implement a NICS appeals policy for persons denied acquisition of a firearm based on information in the NICS that they believe to be erroneous or incomplete.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, Module C–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, telephone number (304) 625–2000.

SUPPLEMENTARY INFORMATION: This rule finalizes two notices of proposed rulemaking: the National Instant Criminal Background Check System Regulation published in the **Federal Register** on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the **Federal Register** on August 17, 1998 (63 FR 43893). The FBI accepted comments on the proposed rules from interested parties until September 16, 1998, and approximately 2,000 comments were received.

In publishing this final rule, the Department also is giving notice, pursuant to section 103(d) of the Brady Act, Public Law 103–159, 107 Stat. 1536, to Federal Firearm Licensees (FFLs) and the chief law enforcement officer of each state that the NICS is established as of October 31, 1998. With limited exceptions, FFLs are required by the Brady Act to begin contacting the system beginning on November 30, 1998, thirty days after the establishment of the system, before they may transfer a firearm to a non-licensee. FFLs shall contact the NICS by contacting either the FBI NICS Operations Center or a state point of contact (POC) for the NICS, as specified by the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Department of the Treasury. The ATF will notify each FFL of the method by which FFLs must contact the NICS in their state.

Significant Comments or Changes

The NICS User Fee

The largest number of comments pertained to the FBI's proposed user fee to be charged FFLs that contact the FBI NICS Operations Center directly for a NICS background check. All of those who commented on the proposed user fee opposed the fee. This issue was the subject of Congressional action since the time of the initial publication of the proposed NICS rule. The Omnibus Appropriations Act for fiscal year 1999 provided additional monies to the FBI to fund the operation of the NICS and prohibited the FBI from charging a fee for NICS checks. Accordingly, the FBI will not be charging the user fee set forth in the proposed NICS user fee regulation. This does not preclude state or local agencies acting as POCs for the NICS from charging such fees as may be appropriate under state or local law.

The NICS Audit Log

A significant number of comments were received opposing the retention by the NICS of a temporary log of background check transactions that allow a firearm transfer to proceed. Most of these comments expressed an opinion that such a log would constitute a national firearms registry, the establishment of which is prohibited by the Brady Act.

The FBI will not establish a federal firearms registry. The FBI is expressly barred from doing so by section 103(i) of the Brady Act. In order to meet her responsibility to maintain the integrity of Department systems, however, the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS.

The NICS Audit Log will contain information relating to each NICS background check requested by FFLs and will allow the FBI to audit use of the system by FFLs and POCs. By auditing the system, the FBI can identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, and protect against the invasions of privacy that would result from such misuse. Audits can also determine whether potential handgun purchasers or FFLs have stolen the identity of innocent and unsuspecting individuals or otherwise submitted false identification information, in order to thwart the name check system. The Audit Log will also allow the FBI to perform quality control checks on the

system's operation by reviewing the accuracy of the responses given by the NICS record examiners to gun dealers.

Under the proposed rule, personally identified information in the NICS Audit Log associated with allowed transfers would be destroyed after eighteen months. Because of the numerous comments objecting to this retention period as too long, the Department reexamined the time period needed to perform audits of the NICS. In light of the statutory requirement that records for allowed transfers be destroyed, and the countervailing statutory requirement to provide for system privacy and security, the Department determined that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months. Section 25.9(b) in the final rule was revised to reflect this and to provide that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system. The Department further determined that the FBI shall work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS. By February 28, 1999, the Department will issue a notice of a proposed revision of the regulation setting forth a further reduced period of retention that will be observed by the system.

Various comments expressed concern that the Audit Log would allow POCs and law enforcement agencies access to records of approved transfers. This is not a well-founded concern because only the FBI will be able to access information in the transaction log. Section 25.9(b)(1) of the final rule was revised to provide explicitly that such information is available only to the FBI, and only for the purposes of conducting audits of the use and performance of the NICS or pursing cases of misuse of the system.

There were also suggestions in the comments that more specific language be added to the final rule setting forth requirements for the FBI to ensure that transaction logs of the separate National Crime Information Center (NCIC) record system also be destroyed to the extent they reflect allowed firearm transfers. The NCIC information system is separate from the NICS. Nonetheless, the FBI has taken steps to preclude transaction logging of personally identified information in either NCIC or the Interstate Identification Index (III) that would pertain to allowed firearm transactions. Thus, the only logging of this information by the FBI is in the NICS Audit Log. Similar steps will be taken to prevent such logging in the future FBI information systems NCIC 2000 and the Integrated Automated Fingerprint Identification System (IAFIS) as soon as practicable, but in no event more than one year after those systems come on-line in July 1999. For NICS disaster recovery, a tape of each weekly, full system backup will be maintained in an off-site location for up to six months. Full system backup tapes will also be stored locally to recycle the off-site storage. The FBI keeps no systematic paper copies of transactions.

Finally, comments were received from state and local law enforcement agencies that will serve as POCs seeking clarification that none of the information about NICS checks in state record systems that they maintain pursuant to state law will be subject to the record destruction requirement. The proposed rule provided: (1) that POC records of inquiry and response messages relating to the initiation and result of a NICS check that allows a transfer must be destroyed; and (2) that POC records of NICS checks that the POC processes that are part of a state record system created and maintained in accordance with state law are not subject to the Brady Act record destruction requirement. Sections 25.9(d)(1) and (2) of the final rule were revised to make it clear that the referenced state records of allowed transfers would not be subject to the Brady Act record destruction requirement if they are part of a record system created and maintained pursuant to independent state law regarding firearms transfers. The reason for this clarification is to avoid interfering with state regulation of firearms. If a state is performing a gun eligibility check under state law, and state law requires or allows the retention of the records of those checks, the state's retention of records of the concurrent performance of a NICS check would not add any more information about gun ownership than the state already retains under its own law.

NICS Checks on Pawnshop Redemptions and Gunsmith Transactions

A significant number of comments on this rule pertained to conducting background checks on firearms redeemed from pawnshops and firearms that were the subject of repair or modification by a gunsmith. Although the Brady Act requires the Attorney General to establish a national instant criminal background check system, it is the Secretary of Treasury through the ATF who defines what constitutes a firearms transfer, how long a background check is valid, which firearm permits constitute a substitute or alternative to a background check, and the recordkeeping requirements for FFLs. The ATF has issued proposed regulations dealing with these issues. (63 FR 8379). Questions and comments about these matters should be directed to the ATF.

A number of comments from the pawnbrokers' industry addressed the circumstances that will develop when a person redeems a firearm from pawn but the firearm cannot be transferred back to the individual because of a disqualifying record found by the NICS check. The U.S. Department of Treasury Fiscal Year 1999 appropriations legislation includes a provision to allow pawnbrokers the option of requesting a NICS background check at the time a person offers the firearm for pawn. An additional check would still be necessary at the time of redemption. NICS will be made available to pawnbrokers for this purpose. No change in the rule is necessary to address this.

Use of State Points of Contact

Some comments questioned the legality of using state POCs to process NICS checks in light of the Supreme Court's decision in *Printz* v. *United States*, 117 S. Ct. 2365 (1997), which held that Congress could not compel the states to perform Brady checks. In response to these comments we note that the states that will act as POCs for the NICS are not being required to do so by Federal law or regulation, but will do so voluntarily pursuant to their own state authority. The final rule's definition of a POC acknowledges that a state or local agency serving that function will be doing so by express or implied authority pursuant to state statute or executive order.

Some commenters objected to the use of state or local law enforcement agencies as NICS POCs even if such agencies do so voluntarily. The FBI considers the use of POCs (serving as intermediaries between FFLs and the system) to be an appropriate means to implement the Brady Act. Fostering state and local participation in the NICS is entirely consistent with both our federal form of government and with practices under the Brady Act's interim provision. Moreover, state and local authorities are likely to have readier access to more detailed information than a single centralized processor, such as the FBI, thus resulting in fewer system misses of disqualified persons and enhancing system responsiveness

for non-disqualified persons. The final rule therefore retains the POC provisions of the proposed rule.

Other Comments

Other comments addressed matters that were established by the Brady Act and are not subject to change by regulation, or addressed matters over which the Attorney General has no authority under the Brady Act. Accordingly, no changes were made to this final rule for comments such as the following: long guns should be exempted from background checks; a government-issued photo identification should not be required for transferee identification; disqualifying information should be included on a person's drivers license to make a NICS check unnecessary; there should be no immunity from liability for persons or agencies providing information to the NICS; the Attorney General should not be permitted to obtain information relevant to NICS determinations from other federal agencies; and FFLs should be able to transfer a firearm sooner than the expiration of three business days in the absence of a NICS response.

Some comments also objected to the use of a NICS ''Delayed'' response, arguing that the Brady Act only provides for approval and denial responses. We note that the ''Delayed'' response is merely a way of communicating to the FFL that the system requires additional time to research and evaluate whether the prospective transferee is disqualified from receiving a firearm. The definition of the ''Delayed'' response in the final rule was revised to reflect this and the fact that a ''Delayed'' response indicates that it would be unlawful to transfer the firearm pending receipt of a follow-up ''Proceed'' response from the NICS or the expiration of three business days, whichever occurs first. The law does not prohibit the system from making such a response.

Some comments objected to solicitation and retention of a prospective transferee's Social Security number (SSN). As noted in the proposed rule, a prospective transferee is free not to provide his or her SSN and will not be denied NICS processing for failure to do so. However, voluntarily providing his or her SSN can benefit a prospective transferee by helping NICS differentiate the prospective transferee from other persons with similar names who may have disqualifying records. Moreover, the SSNs of non-disqualified transferees will be destroyed with the rest of the transferees' identifying data at the end of 180 days. The final rule therefore retains this provision of the proposed rule.

At least one comment asked about the system's handling of persons who have been granted relief from disabilities and the safeguards to ensure this relief is recognized by the NICS. Initially, the NICS will not contain records on persons granted relief from firearm disabilities by the ATF. A procedure will be implemented, however, so that the NICS Operations Center can verify the status of such individuals when they wish to obtain a firearm. The ATF has agreed to notify the FBI if and when it grants relief from disabilities in the future by providing the individuals' names and FBI identification numbers for inclusion in its records. This matter will also be the subject of discussion with state law enforcement agencies that include or should include information in their record systems about relief granted to persons under state statute.

A small number of comments suggested that the FBI establish its regular business hours beginning at 8:00 a.m. in the earlier time zones and/or requiring POCs to offer hours of 9:00 a.m. to 10:00 p.m. The final rule retains the FBI business hours of 9:00 a.m. to 2:00 a.m. It is understood that some places of business are open during hours during which the NICS Operations Center is unavailable. However, the FBI is servicing retail stores in seven different time zones and has attempted to define its business hours to cover the peak sales times in each zone. Additionally, in the near future, the FBI will make electronic access available to FFLs. This access will essentially allow FFLs to conduct background checks 24 hours a day except during minimal periods of system maintenance. Guidelines for POCs have been distributed suggesting minimum business hours of 10:00 a.m. to 9:00 p.m., although these hours are not mandatory.

A number of law enforcement officials noted that the proposed rule would not allow a law enforcement officer to check the NICS for the status of a person in possession of a firearm to help investigate whether the person is unlawfully in possession. The proposed rule also would not allow checks for general law enforcement purposes. The final rule remains unchanged in this regard largely due to privacy-related concerns expressed by the federal agencies supplying records to the NICS Index. Taking into account that the Brady Act expressly requires agencies to provide records to the NICS for Brady Act purposes, the agencies were concerned that use for other purposes would conflict with privacy statutes that restrict the use of such information. The FBI notes that law enforcement has access to the vast majority of records available to the NICS through the National Crime Information Center (NCIC) or the Interstate Identification Index (III).

A number of state officials who will be acting as POCs in their states commented that they verify the identity of the FFLs by means other than the FFL number assigned by the ATF. They further commented that they may provide a state number rather than a NICS system transaction number to the FFLs for approved sales. They may not provide a number for a denied sale. Section 25.6(d), (g), and (i) were changed to accommodate the state systems.

Several comments expressed the desire for the FBI to have both telephone and electronic dial-up access fully available for background checks when the NICS becomes available November 30, 1998. The FBI also would like to have electronic access fully deployed as soon as possible since the electronic access improves service and reduces the number of people needed to operate the system. Since the Brady Act requires telephone access at a minimum, the NICS system developers have focused resources to make sure that the basic system would be operational on schedule. It now appears that electronic dial-up access will become available to FFLs sometime after November 30, 1998. Therefore, section 25.6(b) was changed accordingly. This section was changed further to make it clear that there may be periods within a 24-hour day when NICS would be unavailable due to scheduled or unscheduled downtime. As soon as the NICS is proven to have fully successful operating capability using telephone access, all available resources will be directed toward the additional electronic access. The development time for this capability should be relatively short because prototypes are already complete.

Some comments suggested that the FBI provide a toll-free telephone number to individuals who are denied the transfer of a firearm and wish to appeal this denial, and that the FBI establish in the final rule a time frame within which the FBI and POCs would have to respond to an appeal. The FBI will provide a toll-free number for this purpose. In most cases, however, a written appeal will be required to get the appeal process started. No time frame for answering appeals was included in this rule since the Brady Act specifically provides that the NICS will respond within five business days

to individuals requesting the reasons for being found ineligible to receive a firearm, and that the system immediately consider an individual's submission to correct, clarify, or supplement records in the NICS.

In response to comments about FFL access to the NICS, section 25.6(b) was modified to clarify that the FBI intends to provide FFLs a toll-free number for both telephone and electronic dial-up access.

Technical Changes

The term ''password'' used in the proposed rule has been changed to ''code word'' in the final rule. The term ''password'' has a specific meaning and implications when used in the context of computer security. The ''code word'' selected by the FFL when enrolling with the FBI to gain access to the NICS does not comply with all the security measures normally associated with a ''password.'' Therefore, to avoid creating a false impression, the term ''password'' has been replaced by ''code word.''

In the final rule, words such as ''purchase'' and ''purchaser'' were changed to words such as ''obtain'' and ''transferee'' to clarify that NICS checks apply to transfers and are not limited to firearm sales.

The definition of the term ''Proceed'' was modified in the final rule to clarify that it means that information available to the system at the time of the response did not demonstrate that transfer of the firearm would violate Federal or state law and that, notwithstanding a ''Proceed'' response from the NICS, an FFL may not lawfully transfer a firearm if he or she knows or has reasonable cause to believe that the prospective transferee is prohibited from receiving or possessing firearms, or is otherwise prohibited from transferring the firearm under applicable Federal or state law.

The proposed rule provided that a denial by the NICS of a firearm transfer would be based upon one or more matching records that provide reason to believe that receipt of a firearm by a prospective transferee would violate 18 U.S.C. 922 or state law. The final rule changes the terminology relating to NICS denials to ''information demonstrating'' rather than ''reason to believe'' in order to conform the language of the regulation more closely to the language relating to denials in the Brady Act.

Section 25.6(a) in the final rule was modified to indicate that the ATF will advise FFLs whether they are required to contact the FBI or a POC to initiate a NICS check and how they are to do so. Section 25.6(j) was modified to clarify the allowable non-Brady Act uses of the NICS Index to include responding to inquiries by criminal justice agencies in connection with licenses or permits to carry a concealed firearm or to import, manufacture, deal in, or purchase explosives, and inquiries by the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44), or the National Firearms Act (26 U.S.C. Chapter 53). Section 25.8(b) was modified to indicate that the states will not be required to give the FBI a list of the Originating Agency Identifiers (ORIs) for POCs within the state. Section 25.8(i) was modified to correctly identify the documents where security requirements are outlined. Section 25.9(a) was modified to clarify that in cases of firearms disabilities that are not permanent, e.g., disqualifying restraining orders, the NICS will automatically purge the pertinent record when it is no longer disqualifying. Section 25.10(a) was modified to allow states to accept denial appeals in other than written form.

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. A Brady Act Task Group, composed of experienced state and local law enforcement officials, provided input on the design of the NICS. When developing the guidelines for the NICS, both the Task Group and the FBI took into account the fact that many FFLs are small businesses. A small firearm retailer is defined as having under $5.0 million in annual gross receipts as defined by 13 CFR 121.201. Firearm retailers are included in the Standard Industrial Class (SIC) Code 5941. The FBI has further considered that this rule will apply to pawn redemptions, and that many pawnbrokers are small entities. The obligation of FFLs to contact the NICS before transferring a firearm, and the applicability of NICS checks to pawn redemptions, are imposed by the Brady Act and detailed in the proposed ATF regulations implementing the permanent provisions of the Brady Act (63 FR 8379). In designing the NICS, the FBI has sought to avoid burdens on small entities beyond those requirements needed to conduct the statutorily prescribed background checks effectively and to ensure the privacy and security of the information in the NICS. The FBI is not aware of any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The FBI has sent a notice, including a letter describing NICS and a NICS brochure, to each FFL in the states and territories that are currently expected to be serviced directly by the FBI. The FBI has also met with FFLs at regional firearm seminars conducted by ATF to inform FFLs about NICS plans and to solicit comments needed to finalize these plans. These efforts were made by the FBI also to satisfy the ''outreach'' provisions of 5 U.S.C. 609.

Executive Order 12866

The Department of Justice has completed its examination of this final rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and thus it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12612

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this final rule has been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Public comment was solicited in the notice of proposed rulemaking that preceded this final rule (63 FR 30430). In addition, three data collection activities deemed necessary for the implementation of the NICS were the subject of separate publications.

On May 31, 1998, the FBI submitted a Paperwork Reduction Act request for emergency OMB review and clearance of a proposed data collection entitled the NICS Firearm Dealers Survey. On June 1, 1998, the FBI published a **Federal Register** notice (63 FR 29755) announcing its intention to collect this information. On June 21, 1998, the OMB granted approval for the data collection effort, and issued OMB control number 1110–0025 for inclusion on the data collection instrument. This control number allows the FBI to collect survey data for 180 days from the date of issue. The FBI published a second notice in the **Federal Register** (63 FR 44925) on August 21, 1998, requesting OMB approval to collect this data for a period of up to three years.

On July 16, 1998, the FBI submitted a Paperwork Reduction Act request for emergency OMB review and clearance of a proposed data collection entitled the NICS Federal Firearms Licensee (FFL) Enrollment Form. On July 23, 1998, the FBI published a **Federal Register** notice (63 FR 39594) announcing its intention to collect this information. On August 3, 1998, OMB granted approval for the data collection effort, and issued OMB control number 1110–0026 for inclusion on the data collection instrument. This control number allows the FBI to collect enrollment information for 180 days from the date of issue. The FBI will publish a second notice in the **Federal Register** requesting OMB approval to collect this data for a period of up to three years.

On July 27, 1998, the FBI submitted a Paperwork Reduction Act request for emergency OMB review and clearance of a proposed data collection entitled the FFL Execution of Acknowledgment of Obligations and Responsibilities Under the NICS. On August 3, 1998, the FBI published a **Federal Register** notice (63 FR 41296) announcing its intention to collect this information. On August 3, 1998, the OMB granted approval for the data collection effort, and issued OMB control number 1110–0027 for inclusion on the data collection instrument. This control number allows the FBI to collect this information for 180 days from the date of issue. The FBI will publish a second notice in the **Federal Register** requesting OMB approval to collect this data for a period of up to three years.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Business and industry, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures, Telecommunications.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended by adding part 25 to read as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

Subpart A—The National Instant Criminal Background Check System

Sec.

Authority: Pub. L. 103–159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103–159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of Federal or state law. The regulations in this subpart are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.

§ 25.2 Definitions.

Appeal means a formal procedure to challenge the denial of a firearm transfer.

ARI means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Index.

ATF means the Bureau of Alcohol, Tobacco, and Firearms of the Department of Treasury.

Audit log means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event.

Business day means a 24-hour day (beginning at 12:01 a.m.) on which state offices are open in the state in which the proposed firearm transaction is to take place.

Control Terminal Agency means a state or territorial criminal justice agency recognized by the FBI as the agency responsible for providing state- or territory-wide service to criminal justice users of NCIC data.

Data source means an agency that provided specific information to the NICS.

Delayed means that more research is required prior to a NICS ''Proceed'' or ''Denied'' response. A ''Delayed'' response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up ''Proceed'' response from the NICS or the expiration of three business days, whichever occurs first.

Denied means denial of a firearm transfer based on a NICS response indicating one or more matching records were found providing information demonstrating that receipt of a firearm by a prospective transferee would violate 18 U.S.C. 922 or state law.

Denying agency means a POC or the NICS Operations Center, whichever determines that information in the NICS indicates that the transfer of a firearm to a person would violate Federal or state law, based on a background check.

Dial-up access means any routine access through commercial switched circuits on a continuous or temporary basis.

Federal agency means any authority of the United States that is an ''Agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

FFL (federal firearms licensee) means a person licensed by the ATF as a

manufacturer, dealer, or importer of firearms.

Firearm has the same meaning as in 18 U.S.C. 921(a)(3).

Licensed dealer means any person defined in 27 CFR 178.11.

Licensed importer has the same meaning as in 27 CFR 178.11.

Licensed manufacturer has the same meaning as in 27 CFR 178.11.

NCIC (National Crime Information Center) means the nationwide computerized information system of criminal justice data established by the FBI as a service to local, state, and Federal criminal justice agencies.

NICS means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether receipt of a firearm by a person who is not licensed under 18 U.S.C. 923 would violate Federal or state law.

NICS Index means the database, to be managed by the FBI, containing information provided by Federal and state agencies about persons prohibited under Federal law from receiving or possessing a firearm. The NICS Index is separate and apart from the NCIC and the Interstate Identification Index (III).

NICS Operations Center means the unit of the FBI that receives telephone or electronic inquiries from FFLs to perform background checks, makes a determination based upon available information as to whether the receipt or transfer of a firearm would be in violation of Federal or state law, researches criminal history records, tracks and finalizes appeals, and conducts audits of system use.

NICS Operations Center's regular business hours means the hours of 9:00 a.m. to 2:00 a.m., Eastern Time, seven days a week.

NICS Representative means a person who receives telephone inquiries to the NICS Operations Center from FFLs requesting background checks and provides a response as to whether the receipt or transfer of a firearm may proceed or is delayed.

NRI (NICS Record Identifier) means the system-generated unique number associated with each record in the NICS Index.

NTN (NICS Transaction Number) means the unique number that will be assigned to each valid background check inquiry received by the NICS. Its primary purpose will be to provide a means of associating inquiries to the NICS with the responses provided by the NICS to the FFLs.

ORI (Originating Agency Identifier) means a nine-character identifier assigned by the FBI to an agency that has met the established qualifying criteria for ORI assignment to identify the agency in transactions on the NCIC System.

Originating Agency means an agency that provides a record to a database checked by the NICS.

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an FFL and the federal databases checked by the NICS. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under Federal or state law, and respond to FFLs with the results of a NICS background check. A POC will be an agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order.

Proceed means a NICS response indicating that the information available to the system at the time of the response did not demonstrate that transfer of the firearm would violate federal or state law. A ''Proceed'' response would not relieve an FFL from compliance with other provisions of Federal or state law that may be applicable to firearms transfers. For example, under 18 U.S.C. 922(d), an FFL may not lawfully transfer a firearm if he or she knows or has reasonable cause to believe that the prospective recipient is prohibited by law from receiving or possessing a firearm.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to information that disqualifies the individual from receiving a firearm, and that contains his or her name or other personal identifiers.

STN (State-Assigned Transaction Number) means a unique number that may be assigned by a POC to a valid background check inquiry.

System means the National Instant Criminal Background Check System (NICS).

§ 25.3 System information.

(a) There is established at the FBI a National Instant Criminal Background Check System.

(b) The system will be based at the Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147.

(c) The system manager and address are: Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 935 Pennsylvania Avenue, NW, Washington, D.C. 20535.

§ 25.4 Record source categories.

It is anticipated that most records in the NICS Index will be obtained from Federal agencies. It is also anticipated that a limited number of authorized state and local law enforcement agencies will voluntarily contribute records to the NICS Index. Information in the NCIC and III systems that will be searched during a background check has been or will be contributed voluntarily by Federal, state, local, and international criminal justice agencies.

§ 25.5 Validation and data integrity of records in the system.

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

(1) Ensuring the accurate adding, canceling, or modifying of NICS Index records supplied by Federal agencies;

(2) Automatically rejecting any attempted entry of records into the NICS Index that contain detectable invalid data elements;

(3) Automatic purging of records in the NICS Index after they are on file for a prescribed period of time; and

(4) Quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Index remains valid and correct.

(b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect.

§ 25.6 Accessing records in the system.

(a) FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act. FFLs are strictly prohibited from initiating a NICS background check for any other purpose. The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL's contacting the FBI NICS Operations Center (by telephone or electronic dial-up access) or a POC. FFLs in each state will be advised by the ATF whether they are required to initiate NICS background checks with the NICS Operations Center or a POC and how they are to do so.

(b) *Access to the NICS through the FBI NICS Operations Center.* FFLs may contact the NICS Operations Center by use of a toll-free telephone number, only during its regular business hours. In addition to telephone access, toll-free electronic dial-up access to the NICS will be provided to FFLs after the

beginning of the NICS operation. FFLs with electronic dial-up access will be able to contact the NICS 24 hours each day, excluding scheduled and unscheduled downtime.

(c)(1) The FBI NICS Operations Center, upon receiving an FFL telephone or electronic dial-up request for a background check, will:

(i) Verify the FFL Number and code word;

(ii) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;

(iii) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records; and

(iv) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(A) ''Proceed'' response, if no disqualifying information was found in the NICS Index, NCIC, or III.

(B) ''Delayed'' response, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from possessing a firearm by Federal or state law. A ''Delayed'' response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up ''Proceed'' response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 a.m. on Friday and shortly thereafter receives a ''Delayed'' response from the NICS. If state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a ''Proceed'' or ''Denied'' response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)

(C) ''Denied'' response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides information demonstrating that receipt of a firearm by the prospective transferee would violate 18 U.S.C. 922 or state law. The ''Denied'' response will be provided to the requesting FFL by the NICS Operations Center during its regular business hours.

(2) None of the responses provided to the FFL under paragraph (c)(1) of this section will contain any of the underlying information in the records checked by the system.

(d) *Access to the NICS through POCs.* In states where a POC is designated to process background checks for the NICS, FFLs will contact the POC to initiate a NICS background check. Both ATF and the POC will notify FFLs in the POC's state of the means by which FFLs can contact the POC. The NICS will provide POCs with electronic access to the system virtually 24 hours each day through the NCIC communication network. Upon receiving a request for a background check from an FFL, a POC will:

(1) Verify the eligibility of the FFL either by verification of the FFL number or an alternative POC-verification system;

(2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; and (3) Transmit the request for a background check via the NCIC interface to the NICS.

(e) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in state and local law enforcement and other relevant record systems, and may provide a unique State-Assigned Transaction Number (STN) to a valid inquiry for a background check.

(f) When the NICS receives an inquiry from a POC, it will search the relevant databases (i.e., NICS Index, NCIC, III) for any matching record(s) and will provide an electronic response to the POC. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:

(1) No record response, if the NICS determines, through a complete search, that no matching record exists.

(2) Partial response, if the NICS has not completed the search of all of its records. This response will indicate the databases that have been searched (i.e., III, NCIC, and/or NICS Index) and the databases that have not been searched. It will also provide any potentially disqualifying information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.

(3) Single matching record response, if all records in the relevant databases have been searched and one matching record was found.

(4) Multiple matching record response, if all records in the relevant databases have been searched and more than one matching record was found.

(g) Generally, based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will:

(1) Confirm any matching records; and

(2) Notify the FFL that the transfer may proceed, is delayed pending further record analysis, or is denied. ''Proceed'' notifications made within three business days will be accompanied by the NTN or STN traceable to the NTN. The POC may or may not provide a transaction number (NTN or STN) when notifying the FFL of a ''Denied'' response.

(h) In cases where a transfer is denied by a POC, the POC should provide a denial notification to the NICS. This denial notification will include the name of the person who was denied a firearm and the NTN. The information provided in the denial notification will be maintained in the NICS Audit Log described in § 25.9(b). This notification may be provided immediately by electronic message to the NICS (i.e., at the time the transfer is denied) or as soon thereafter as possible. If a denial notification is not provided by a POC, the NICS will assume that the transfer was allowed and will destroy its records regarding the transfer in accordance with the procedures detailed in § 25.9.

(i) *Response recording.* FFLs are required to record the system response, whether provided by the FBI NICS Operations Center or a POC, on the appropriate ATF form for audit and inspection purposes, under 27 CFR part 178 recordkeeping requirements. The FBI NICS Operations Center response will always include an NTN and associated ''Proceed,'' ''Delayed,'' or ''Denied'' determination. POC responses may vary as discussed in paragraph (g) of this section. In these instances, FFLs will record the POC response, including any transaction number and/or determination.

(j) *Access to the NICS Index for purposes unrelated to NICS background checks required by the Brady Act.* Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) shall be limited to uses for the purpose of:

(1) Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; or

(2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53).

§ 25.7 Querying records in the system.

(a) The following search descriptors will be required in all queries of the system for purposes of a background check:

(1) Name;

(2) Sex;

(3) Race;

(4) Complete date of birth; and

(5) State of residence.

(b) A unique numeric identifier may also be provided to search for additional records based on exact matches by the numeric identifier. Examples of unique numeric identifiers for purposes of this system are: Social Security number (to comply with Privacy Act requirements, a Social Security number will not be required by the NICS to perform any background check) and miscellaneous identifying numbers (e.g., military number or number assigned by Federal, state, or local authorities to an individual's record). Additional identifiers that may be requested by the system after an initial query include height, weight, eye and hair color, and place of birth. At the option of the querying agency, these additional identifiers may also be included in the initial query of the system.

§ 25.8 System safeguards.

(a) Information maintained in the NICS Index is stored electronically for use in an FBI computer environment. The NICS central computer will reside inside a locked room within a secure facility. Access to the facility will be restricted to authorized personnel who have identified themselves and their need for access to a system security officer.

(b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures listed in paragraphs (c) through (f) of this section are the minimum to be adopted by all POCs and data sources having access to the NICS.

(c) State or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NCIC users and shall observe all procedures set forth in the NCIC Security Policy of 1992 when processing NICS background checks. The responsibilities of the Control Terminal Agencies and the computer centers include the following:

(1) The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data.

(2) Since personnel at these computer centers can have access to data stored in the NICS, they must be screened thoroughly under the authority and supervision of a state Control Terminal Agency. This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state Control Terminal Agency. This screening will also apply to non-criminal justice maintenance or technical personnel.

(3) All visitors to these computer centers must be accompanied by staff personnel at all times.

(4) POCs utilizing a state/NCIC terminal to access the NICS must have the proper computer instructions written and other built-in controls to prevent data from being accessible to any terminals other than authorized terminals.

(5) Each state Control Terminal Agency shall build its data system around a central computer, through which each inquiry must pass for screening and verification.

(d) Authorized state agency remote terminal devices operated by POCs and having access to the NICS must meet the following requirements:

(1) POCs and data sources having terminals with access to the NICS must physically place these terminals in secure locations within the authorized agency;

(2) The agencies having terminals with access to the NICS must screen terminal operators and must restrict access to the terminals to a minimum number of authorized employees; and

(3) Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.

(e) FFL remote terminal devices may be used to transmit queries to the NICS via electronic dial-up access. The following procedures will apply to such queries:

(1) The NICS will incorporate a security authentication mechanism that performs FFL dial-up user authentication before network access takes place;

(2) The proper use of dial-up circuits by FFLs will be included as part of the periodic audits by the FBI; and

(3) All failed authentications will be logged by the NICS and provided to the NICS security administrator.

(f) FFLs may use the telephone to transmit queries to the NICS, in accordance with the following procedures:

(1) FFLs may contact the NICS Operations Center during its regular business hours by a telephone number provided by the FBI;

(2) FFLs will provide the NICS Representative with their FFL Number and code word, the type of sale, and the name, sex, race, date of birth, and state of residence of the prospective buyer; and

(3) The NICS will verify the FFL Number and code word before processing the request.

(g) The following precautions will be taken to help ensure the security and privacy of NICS information when FFLs contact the NICS Operations Center:

(1) Access will be restricted to the initiation of a NICS background check in connection with the proposed transfer of a firearm.

(2) The NICS Representative will only provide a response of ''Proceed'' or ''Delayed'' (with regard to the prospective firearms transfer), and will not provide the details of any record information about the transferee. In cases where potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a ''Delayed'' response to the FFL. Follow-up ''Proceed'' or ''Denied'' responses will be provided by the NICS Operations Center during its regular business hours.

(3) The FBI will periodically monitor telephone inquiries to ensure proper use of the system.

(h) All transactions and messages sent and received through electronic access by POCs and FFLs will be automatically logged in the NICS Audit Log described in § 25.9(b). Information in the NICS Audit Log will include initiation and termination messages, failed authentications, and matching records located by each search transaction.

(i) The FBI will monitor and enforce compliance by NICS users with the applicable system security requirements outlined in the NICS POC Guidelines and the NICS FFL Manual (available from the NICS Operations Center, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147).

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain NICS Index records that indicate that receipt of a firearm by the individuals to whom the records pertain would violate Federal or state law. The NICS will retain such records indefinitely, unless they are canceled by the originating agency. In cases where a firearms disability is not permanent, e.g., a disqualifying restraining order, the NICS will automatically purge the pertinent record when it is no longer disqualifying. Unless otherwise removed, records contained in the NCIC and III files that are accessed during a background check

will remain in those files in accordance with established policy.

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) The Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN). In cases of allowed transfers, all information in the Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed after not more than six months after the transfer is allowed. Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922 (g) or (n) or by state law.

(2) The Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the Audit Log pertaining to allowed transfers may only be used by the FBI for the purpose of conducting audits of the use and performance of the NICS. Such information, however, may be retained and used as long as needed to pursue cases of identified misuse of the system. The NICS, including the NICS Audit Log, may not be used by any department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. The Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions.

§ 25.10 Correction of erroneous system information.

(a) An individual may request the reason for the denial from the agency that conducted the check of the NICS (the ''denying agency,'' which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. The request for the reason for the denial must be made in writing to the denying agency. (POCs at their discretion may waive the requirement for a written request.)

(b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. The response should indicate whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity (i.e., a claim that the record in question does not pertain to the individual who was denied).

(c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the denying agency, which will, in turn, verify the record correction with the originating agency (assuming the originating agency has not already notified the denying agency of the correction) and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the above procedure where a POC was the denying agency, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C–3, Clarksburg, West Virginia 26306–0147. Upon receipt of the information, the FBI will investigate the matter by contacting the POC that denied the transaction or the data source. The FBI will request the POC or the data source to verify that the record in question pertains to the individual who was denied, or to verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency or any state that was the source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating agency, the FBI or the agency that contributed the record shall correct the data in the NICS and the denying agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. If the appeal of a contested record is successful and thirty (30) days or less have transpired since the initial check, and there are no other disqualifying records upon which the denial was based, the NICS will communicate a ''Proceed'' response to the FFL. If the appeal is successful and more than thirty (30) days have transpired since the initial check, the FFL must recheck the NICS before allowing the sale to continue. In cases where multiple disqualifying records are the basis for the denial, the individual must pursue a correction for each record.

(f) An individual may also contest the accuracy or validity of a disqualifying record by bringing an action against the state or political subdivision responsible for providing the contested information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the firearm transfer be approved.

§ 25.11 Prohibited activities and penalties.

(a) State or local agencies, FFLs, or individuals violating this subpart A shall be subject to a fine not to exceed $10,000 and subject to cancellation of NICS inquiry privileges.

(b) Misuse or unauthorized access includes, but is not limited to, the following:

(1) State or local agencies', FFLs', or individuals' purposefully furnishing incorrect information to the system to obtain a ''Proceed'' response, thereby allowing a firearm transfer;

(2) State or local agencies', FFLs', or individuals' purposefully using the system to perform a check for unauthorized purposes; and

(3) Any unauthorized person's accessing the NICS.

Dated: October 27, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–29109 Filed 10–29–98; 8:45 am]

BILLING CODE 4410–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 68a

RIN 0925–AA09

National Institutes of Health Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

AGENCY: National Institutes of Health, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is issuing regulations to implement provisions of the Public Health Service Act authorizing the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds. The purpose of the program is the recruitment and retention of highly qualified health professionals, who are from disadvantaged backgrounds, to conduct clinical research as employees of the NIH by providing repayment of qualified educational loans.

EFFECTIVE DATE: This final rule is effective on November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20852; telephone 301–496–4607 (not a toll-free number); Fax 301–402–0169; or E-mail (jm40z@nih.gov). For program information contact: Marc S. Horowitz, telephone 301–402–5666 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The NIH Revitalization Act of 1993 (Pub. L. 103–43) was enacted June 10, 1993, adding section 487E of the Public Health Service (PHS) Act, 42 U.S.C. 288–5. Section 487E authorizes the Secretary to carry out a program of entering into contracts with appropriately qualified health professionals from disadvantaged backgrounds with substantial educational loan debt relative to income. Under such contracts, qualified health professionals agree to conduct clinical research as NIH employees for a minimum of two years, in consideration of the Federal Government agreeing to repay a maximum of $20,000 annually of the principal and the interest of the educational loans of such health professionals. This program is known as the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds. The NIH is amending title 42 of the Code of Federal Regulations by adding a new part 68a to govern the administration of this loan repayment program.

The regulations specify the scope and purpose of the program, who is eligible to apply, how individuals apply to participate in the program, how participants are selected, and the terms and conditions of the program.

The NIH announced its plans to issue the regulations in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, February 10, 1997 (62 FR 5953). The NPRM provided for a 60-day comment period. The NIH received no comments. Consequently, the final regulations are the same as those originally proposed in February 1997, except for an editorial change reflecting the NIH Medical Board's change of name to the ''Medical Executive Committee.''

The following is provided as public information.

Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in section 3(f) of the Order, pre-publication review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is necessary. This final rule has been reviewed under Executive Order 12866 by OIRA and has been deemed not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. I certify that this final rule will not have any such impact.

Paperwork Reduction Act

This final rule does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The application forms used by the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds have been reviewed and approved by OMB under OMB No. 0925–0361 (expires September 30, 1998).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered program affected by the proposed regulation is:

93.220—NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds

List of Subjects in 42 CFR Part 68a

Health—clinical research, medical research; Loan programs—health.

Dated: September 18, 1998.

Harold Varmus,

Director, National Institutes of Health.

For the reasons presented in the preamble, title 42 of the Code of Federal Regulations is amended by adding a new part 68a to read as set forth below.

PART 68a—NATIONAL INSTITUTES OF HEALTH (NIH) CLINICAL RESEARCH LOAN REPAYMENT PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS (CR–LRP)

Sec.

Authority: 42 U.S.C. 288–5.

§ 68a.1 What is the scope and purpose of the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR–LRP)?

This part applies to the award of educational loan payments under the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR–LRP) authorized by section 487E of the Public Health Service Act (42 U.S.C. 288–5). The purpose of this program is to recruit and retain appropriately qualified health professionals, who are from disadvantaged backgrounds and have substantial educational debt relative to income, to conduct clinical research as NIH employees.

§ 68a.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Applicant means an individual who applies to, and meets the eligibility criteria for the CR–LRP.

Approved clinical research means clinical research approved by the Clinical Research Loan Repayment Committee.

Clinical privileges means the delineation of privileges for patient care granted to qualified health professionals by the NIH Medical Executive Committee or other appropriate credentialing board.

Clinical research means activities which qualify for inclusion as clinical research in the CR–LRP as determined by the Clinical Research Loan Repayment Committee.

Clinical Research Loan Repayment Committee (CR–LRC) means the scientific board assembled to review, rank, and approve or disapprove Clinical Research Loan Repayment Program applications. The CR–LRC is composed of NIH scientific staff and co-chaired by the Associate Director for Clinical Research, NIH, and the Associate Director for Research on Minority Health, NIH. Members are nominated by the Deputy Director, Intramural Research, NIH, and the co-chairs, and appointed by the Director, NIH.

Clinical Research Loan Repayment Program (CR–LRP or Program) means the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds authorized by section 487E of the Act, as amended.

Clinical Research Loan Repayment Program (CR–LRP or Program) contract refers to the agreement, which is signed by an applicant and the Secretary, wherein the applicant from a disadvantaged background agrees to engage in clinical research as an employee of the NIH and the Secretary agrees to repay qualified educational loans for a prescribed period as specified in this part.

Clinical researcher means an NIH employee with clinical privileges who is conducting approved clinical research.

Commercial loans means loans made by banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, schools, and other financial or credit institutions which are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business.

Current payment status means that a qualified educational loan is not past due in its payment schedule as determined by the lending institution.

Debt threshold refers to the minimum amount of qualified educational debt an individual must have, on his/her program eligibility date, in order to be eligible for Program benefits and, for purposes of eligibility under this part, debt threshold means that the qualified educational debt must equal or exceed 20 percent of an individual's annual NIH salary on his/her program eligibility date.

Educational expenses means the cost of the health professional's education, including the tuition expenses and other educational expenses such as fees, books, supplies, educational equipment and materials, and laboratory expenses.

Government loans means loans made by Federal, State, county, or city agencies which are authorized by law to make such loans.

Individual from disadvantaged background means an individual who:

(1) Comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**.

Institute, Center, or *Agency* (ICA) means an institute, center, or agency of the National Institutes of Health.

Living expenses means the reasonable cost of room and board, transportation and commuting costs, and other reasonable costs incurred during an individual's attendance at an educational institution.

Participant means an individual whose application to the CR–LRP has been approved and whose Program contract has been executed by the Secretary.

Program means the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds.

Program eligibility date means the date on which an individual's Program contract is executed by the Secretary and that individual is engaged in approved clinical research as an employee of the NIH.

Qualified educational loans and interest/debt include Government and commercial educational loans and interest for:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (3) reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses incurred.

Reasonable educational and living expenses means those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budget for educational and living expenses for the degree program and for the year(s) during which the participant was enrolled in school. If there is no standard budget available from the school or if the participant requests repayment for educational and living expenses which exceed the standard student budget, reasonableness of educational and living expenses incurred must be substantiated by additional contemporaneous documentation, as determined by the Secretary.

Repayable debt means the portion, as established by the Secretary, of an individual's total qualified educational debt relative to the NIH salary, which can be paid by the CR–LRP. Specifically, qualifying educational debt amounts in excess of 50 percent of the debt threshold will be considered for repayment.

Salary means base pay plus quarters, subsistence, and variable housing allowances, if applicable.

School means undergraduate, graduate, and health professions schools which are accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Service means the Public Health Service.

State means one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Withdrawal means a request by a participant, prior to the Program making payments on his or her behalf, for withdrawal from Program participation. A withdrawal is without penalty to the participant and without obligation to the Program.

§ 68a.3 Who is eligible to apply?

To be eligible to apply to the CR–LRP, an individual must be a citizen, national, or permanent resident of the United States; hold a M.D., Ph.D., D.O., D.D.S., D.M.D., A.D.N./B.S.N., or equivalent degree; have, on his/her program eligibility date, qualified educational debt equal to or in excess of the debt threshold; and be an individual from a disadvantaged background.

§ 68a.4 Who is eligible to participate?

To be eligible to participate in the CR–LRP, an applicant must have the recommendation of the employing ICA Scientific Program Director, the concurrence of the employing ICA Director, and the approval of the CR–LRC. Since participation in the Program is contingent, in part, upon employment with NIH, a Program contract may not be awarded to an applicant until an employment commitment has been made by the employing ICA Personnel Department.

§ 68a.5 Who is ineligible to participate?

The following individuals are ineligible for CR–LRP participation:

(a) Persons who are not eligible applicants as specified under section 68a.3;

(b) Persons who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless a deferral is granted for the length of his/her service obligation under the CR–LRP. The following are examples of programs which have a service obligation: Physicians Shortage Area Scholarship Program, National Research Service Award Program, Public Health Service Scholarship, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program, Indian Health Service Scholarship Program, and the NIH AIDS Research Loan Repayment Program.

(c) Persons who are not NIH employees, such as Intramural Research Training Award (IRTA) recipients, Visiting Fellows, National Research Service Award (NRSA) recipients, Guest Researchers or Special Volunteers, NIH-National Research Council (NRC) Biotechnology Research Associates Program participants, and Intergovernmental Personnel Act (IPA) participants; or

(d) Persons who do not have clinical privileges.

§ 68a.6 How do individuals apply to participate in the CR–LRP?

An application for participation in the CR–LRP shall be submitted to the NIH office which is responsible for the Program's administration, in such form and manner as the Secretary may prescribe.

§ 68a.7 How are applicants selected to participate in the CR–LRP?

To be selected for participation in the CR–LRP, applicants must satisfy the following requirements:

(a) Applicants must meet the eligibility requirements specified in § 68a.3 and § 68a.4.

(b) Applicants must not be ineligible for participation as specified in § 68a.5.

(c) Applicants must be selected for approval by the CR–LRC, based upon a review of their applications.

§ 68a.8 What does the CR–LRP provide to participants?

(a) Loan repayments: For each year of service the individual agrees to serve, with a minimum of 2 years of obligated service, the Secretary may pay up to $20,000 per year of a participant's repayable debt.

(b) Under § 68a.8(a), the Secretary will make payments in the discharge of debt to the extent appropriated funds are available for these purposes.

§ 68a.9 What loans qualify for repayment?

(a) The CR–LRP will repay participants' lenders the principal, interest, and related expenses of qualified Government and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

(b) The following educational loans are ineligible for repayment under the CR–LRP:

(1) Loans obtained from other than a government entity or commercial lending institution;

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary to be reasonable based on additional documentation provided by the individual;

(4) Loans, financial debts, or service obligations incurred under the following programs: Physicians Shortage Area Scholarship Program (Federal or State), National Research Service Award Program, Public Health and National Health Service Corps Scholarship Training Program, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program, Indian Health Service Program, and similar programs, upon determination by the Secretary, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(5) Any loan in default or not in a current payment status;

(6) Loan amounts which participants have paid or were due to have paid prior to the program eligibility date; and

(7) Loans for which promissory notes have been signed after the program eligibility date.

§ 68a.10 What does an individual have to do in return for loan repayments received under the CR–LRP?

Individuals must agree to be engaged in approved clinical research, as employees of the NIH, for a minimum initial period of two consecutive years.

§ 68a.11 How does an individual receive loan repayments beyond the initial two-year contract?

An individual may apply for and the Secretary may grant extension contracts for one-year periods, if there is sufficient debt remaining to be repaid and the individual is engaged in approved clinical research as an NIH employee.

§ 68a.12 What will happen if an individual does not comply with the terms and conditions of participation in the CR–LRP?

(a) Absent withdrawal (see § 68a.2) or termination under paragraph (d) of this section, any participant who fails to complete the minimum two-year service obligation required under the Program contract will be considered to have breached the contract and will be subject to assessment of monetary damages and penalties as follows:

(1) Participants who leave during the first year of the initial contract are liable for amounts already paid by the NIH on behalf of the participant plus an amount equal to $1,000 multiplied by the number of months of the original service obligation.

(2) Participants who leave during the second year of the contract are liable for amounts already paid by the NIH on behalf of the participant plus $1,000 for each unserved month.

(b) Payments of any amount owed under paragraph (a) of this section shall be made within one year of the participant's breach (or such longer period as determined by the Secretary).

(c) Participants who sign a continuation contract for any year beyond the initial two-year period and fail to complete the one-year period specified are liable for the pro rata amount of any benefits advanced beyond the period of completed service.

(d) Terminations will not be considered a breach of contract in cases where such terminations are beyond the control of the participant as follows:

(1) Terminations for cause or for convenience of the Government will not be considered a breach of contract and monetary damages will not be assessed.

(2) Occasionally, a participant's research assignment may evolve and change to the extent that the individual is no longer engaged in approved clinical research. Similarly, the research needs and priorities of the ICA and/or the NIH may change to the extent that a determination is made that the health professional's skills may be better utilized in a non-clinical research assignment. Under these circumstances, the following will apply:

(i) Program participation and benefits will cease as of the date an individual is no longer engaged in approved clinical research; and

(ii) Normally, job changes of this nature will not be considered a breach of contract on the part of either the NIH or the participant. Based on the recommendation of the ICA Director and concurrence of the Secretary, the participant will be released from the remainder of his or her service obligation without assessment of monetary penalties. The participant in this case will be permitted to retain all Program benefits made or owed by NIH on his/her behalf up to the date the individual is no longer engaged in approved clinical research, except the pro rata amount of any benefits advanced beyond the period of completed service.

§ 68a.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?

(a) Any obligation of a participant for service or payment to the Federal Government under this part will be canceled upon the death of the participant.

(b) The Secretary may waive or suspend any service or payment obligation incurred by the participant upon request whenever compliance by the participant:

(1) Is impossible,

(2) Would involve extreme hardship to the participant, or

(3) If enforcement of the service or payment obligation would be against equity and good conscience.

(4) The Secretary may approve a request for a suspension of the service or payment obligations for a period of 1 year. A renewal of this suspension may also be granted.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the Secretary determines, on the basis of such information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in the permanent inability of the participant to perform the service or other activities which would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against equity and good conscience, the Secretary, on the basis of such information and documentation as may be required, will consider:

(1) The participant's present financial resources and obligations;

(2) The participant's estimated future financial resources and obligations; and

(3) The extent to which the participant has problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

§ 68a.14 When can a CR–LRP payment obligation be discharged in bankruptcy?

Any payment obligation incurred under § 68a.12 may be discharged in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment is required and only if the bankruptcy court finds that a nondischarge of the obligation would be unconscionable.

§ 68a.15 Additional conditions.

When a shortage of funds exists, participants may be funded partially, as determined by the Secretary. However, once a CR–LRP contract has been signed by both parties, the Secretary will obligate such funds as necessary to ensure that sufficient funds will be available to pay benefits for the duration of the period of obligated service unless, by mutual written agreement between the Secretary and the applicant, specified otherwise. Benefits will be paid on a quarterly basis after each service period unless specified otherwise by mutual written agreement between the Secretary and the applicant. The Secretary may impose additional conditions as deemed necessary.

§ 68a.16 What other regulations and statutes apply?

Several other regulations and statutes apply to this part. These include, but are not necessarily limited to:

Debt Collection Act of 1982, Pub. L. 97–365 (5 U.S.C. 5514);

Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

Federal Debt Collection Procedures Act of 1990, Pub. L. 101–647 (28 U.S.C. 1); and Privacy Act of 1974 (5 U.S.C. 552a).

[FR Doc. 98–29130 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona: Maricopa (FEMA Docket No. 7252).	Unincorporated Areas.	June 11, 1998 June 18, 1998 *Arizona Republic*.	The Honorable Don Stapley Chairperson, Maricopa County Board of Supervisors 301 West Jefferson, 10th Floor Phoenix, Arizona 85003.	May 15, 1998	040037
Arizona: Maricopa (FEMA Docket No. 7252).	Unincorporated Areas.	July 24, 1998 July 31, 1998 *Scottsdale Progress-Tribune*.	The Honorable Janice K. Brewer Chairman, Maricopa County Board of Supervisors 301 West Jefferson, 10th Floor Phoenix, Arizona 85003.	June 30, 1998	040037
Arizona: Maricopa (FEMA Docket No. 7252).	Town of Paradise Valley.	June 11, 1998 June 18, 1998 *Arizona Republic*.	The Honorable Marian Davis Mayor, Town of Paradise Valley 6401 East Lincoln Drive Paradise Valley, Arizona 85253.	May 15, 1998	040049

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona: Maricopa (FEMA Docket No. 7252).	City of Phoenix	June 11, 1998 June 18, 1998 *Arizona Republic*.	The Honorable Skip Rimsza Mayor, City of Phoenix 200 West Washington Street, 11th Floor Phoenix, Arizona 85003.	May 15, 1998	040051
Arizona: Pima (FEMA Docket No. 7252).	Unincorporated Areas.	July 2, 1998 July 9, 1998 *Arizona Daily Star*.	The Honorable Mike Boyd Chairman, Pima County Board of Supervisors 130 West Congress, Fifth Floor Tucson, Arizona 85701.	May 27, 1998	040073
Arizona: Maricopa (FEMA Docket No. 7252).	City of Scottsdale	June 11, 1998 June 18, 1998 *Arizona Republic*.	The Honorable Sam Kathryn Campana Mayor, City of Scottsdale P.O. Box 1000 Scottsdale, Arizona 85252–1000.	May 15, 1998	045012
Arizona: Maricopa (FEMA Docket No. 7252).	City of Scottsdale	July 2, 1998 July 9, 1998 *Scottdale Progress-Tribune*.	The Honorable Sam Kathryn Campana Mayor, City of Scottsdale P.O. Box 1000 Scottsdale, Arizona 85252–1000.	June 2, 1998	045012
Arizona: Maricopa (FEMA Docket No. 7252).	City of Scottsdale	July 24, 1998 July 31, 1998 *Scottsdale Progress-Tribune*.	The Honorable Sam Kathryn Campana Mayor, City of Scottsdale 3939 Civic Center Boulevard Scottsdale, Arizona 85252–1000.	June 30, 1998	045012
Arizona: Maricopa (FEMA Docket No. 7252).	City of Tempe	June 11, 1998 June 18, 1998 *Arizona Republic*.	The Honorable Neil Giuliano Mayor, City of Tempe P.O. Box 5002 Tempe, Arizona 85280.	May 15, 1998	040054
California: Riverside (FEMA Docket No. 7252).	Agua Caliente Band of Cahuilla Indians Tribe.	June 18, 1998 June 25, 1998 *Desert Sun*.	The Honorable Richard M. Milanovich Chairman, Tribal Council Agua Caliente Band of Cahuilla Indians 600 East Tahquitz Canyon Way Palm Springs, California 92262.	May 22, 1998	060763
California: Riverside (FEMA Docket No. 7252).	City of Cathedral City.	June 18, 1998 June 25, 1998 *The Press-Enterprise*.	The Honorable David W. Berry Mayor, City of Cathedral City P.O. Box 5001 Cathedral City, California 92235–5001.	May 22, 1998	060704
California: Contra Costa (FEMA Docket No. 7252).	City of Danville	June 18, 1998 June 25, 1998 *San Ramone Valley Times*.	The Honorable Dick Waldo Mayor, City of Danville 510 La Gonda Way Danville, California 94526.	May 20, 1998	060707
California: Solano (FEMA Docket No. 7252).	City of Dixon	June 10, 1998 June 17, 1998 *Dixon Tribune*.	The Honorable Don Erickson Mayor, City of Dixon 600 East ''A'' Street Dixon, California 95620–3697.	May 11, 1998	060369
California: Riverside (FEMA Docket No. 7252).	City of Palm Springs.	June 18, 1998 June 25, 1998 *Desert Sun*.	The Honorable Lloyd Maryanov Mayor City of Palm Springs P.O. Box 2743 Palm Springs, California 92263.	May 22, 1998	060257
California: San Diego (FEMA Docket No. 7252).	Unincorporated Areas.	June 9, 1998 June 16, 1998 *San Diego Daily Transcript*.	The Honorable Greg Cox Chairman, San Diego County Board of Supervisors 1600 Pacific Highway, Room 335 San Diego, California 92101.	May 13, 1998	060284
Colorado: Jefferson (FEMA Docket No. 7252).	City of Westminster.	July 23, 1998 July 30, 1998 *Westminster Window*.	The Honorable Nancy M. Heil Mayor, City of Westminster 4800 West 92nd Avenue Westminster, Colorado 80030.	June 22, 1998	080008
Iowa: Polk (FEMA Docket No. 7252).	City of Ankeny	July 15, 1998 July 22, 1998 *The Des Moines Register*.	The Honorable Merle Johnson Mayor, City of Ankeny 1605 North Ankeny Boulevard, Suite 200 Ankeny, Iowa 50021.	October 20, 1998	190226
Missouri: St. Louis (FEMA Docket No. 7252).	Unincorporated Areas.	June 11, 1998 June 18, 1998 *St. Louis Post-Dispatch*.	The Honorable Buzz Westfall St. Louis County Executive 41 South Central Executive Clayton, Missouri 63105.	September 16, 1998.	290327
Montana: Yellowstone (FEMA Docket No. 7252).	City of Billings	July 9, 1998 July 16, 1998 *Billings Gazette*.	The Honorable Charles F. Tooley Mayor, City of Billings P.O. Box 1178 Billings, Montana 59103–1178.	June 9, 1998	300085
New Mexico: Bernalillo (FEMA Docket No. 7252).	City of Albuquerque.	July 24, 1998 July 31, 1998 *Albuquerque Journal*.	The Honorable Martin J. Chavez Mayor, City of Albuquerque P.O. Box 1293 Albuquerque, New Mexico 87103–1293.	June 18, 1998	350002
New Mexico: Bernalillo (FEMA Docket No. 7252).	Unincorporated Areas.	July 3, 1998 July 10, 1998 *Albuquerque Journal*.	The Honorable Tom Rutherford Chairman, Bernalillo County Board of Commissioners 2400 Broadway Southeast Albuquerque, New Mexico 87102.	June 3, 1998	50001

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
New Mexico: Bernalillo (FEMA Docket No. 7252).	Unincorporated Areas.	July 24, 1998 July 31, 1998 *Albuquerque Journal*.	The Honorable Tom Rutherford Chairman, Bernalillo County Board of Commissioners 2400 Broadway Southeast Albuquerque, New Mexico 87102.	June 18, 1998	350001
Nevada: Clark (FEMA Docket No. 7252).	Unincorporated Areas.	June 18, 1998 June 25, 1998 *Las Vegas Review-Journal*.	The Honorable Yvonne Atkinson Gates Chairperson, Clark County Board of Commissioners 500 Grand Central Parkway Las Vegas, Nevada 89155.	May 20, 1998	320003
Oklahoma: Tulsa (FEMA Docket No. 7252).	City of Broken Arrow.	July 23, 1998 July 30, 1998 *Broken Arrow Ledger*.	The Honorable James Reynolds Mayor, City of Broken Arrow P.O. Box 610 Broken Arrow, Oklahoma 74013.	June 12, 1998	400236
Oregon: Washington (FEMA Docket No. 7252).	City of Hillsboro ...	July 16, 1998 July 23, 1998 *Hillsboro Argus*.	The Honorable Gordon Faber Mayor, City of Hillsboro 123 West Main Street Hillsboror, Oregon 97123–39999.	June 10, 1998	410243
Texas: Collin (FEMA Docket No. 7252).	City of Allen	June 17, 1998 June 24, 1998 *The Allen American*.	The Honorable Steve Terrell Mayor, City of Allen One Butler Circle Allen, Texas 75013.	May 13, 1998	480131
Texas: Travis (FEMA Docket No. 7252).	City of Austin	June 19, 1998 June 26, 1998 *Austin American Statesman*.	The Honorable Kirk A. Watson Mayor, City of Austin 124 West Eighth Street Austin, Texas 78701.	May 8, 1998	480624
Texas: Johnson (FEMA Docket No. 7252).	City of Burleson ...	July 8, 1998 July 15, 1998 *Burleson Star*.	The Honorable Rick Roper Mayor, City of Burleson 141 West Renfro Burleson, Texas 76028.	October 13, 1998	485459
Texas: Williamson (FEMA Docket No. 7252).	City of Cedar Park	July 8, 1998 July 15, 1998 *Hill Country News*.	The Honorable Dorothy Duckett Mayor, City of Cedar Park 600 North Bell Boulevard Cedar Park, Texas 78613.	June 11, 1998	481282
Texas: Collin (FEMA Docket No. 7252).	City of Dallas	July 17, 1998 July 24, 1998 *The Dallas Morning News*.	The Honorable Ron Kirk Mayor, City of Dallas 1500 Marilla Street, Suite 5EN Dallas, Texas 75201.	October 22, 1998	480171
Texas: Denton (FEMA Docket No. 7252).	Town of Flower Mound.	July 22, 1998 July 29, 1998 *Denton Record-Chronicle*.	The Honorable Larry W. Lipscomb Mayor, Town of Flower Mound 2121 Cross Timbers Drive Flower Mound, Texas 75028.	June 9, 1998	480777
Texas: Fort Bend (FEMA Docket No. 7252).	Unincorporated Areas.	June 17, 1998 June 24, 1998 *Fort Bend Star*.	The Honorable Michael D. Rozell Fort Bend County Judge 301 Jackson Street, Suite 719 Richmond, Texas 77469.	May 8, 1998	480228
Texas: Tarrant (FEMA Docket No. 7252).	City of Fort Worth	June 12, 1998 June 19, 1998 *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr Mayor, City of Fort Worth City Hall 1000 Throckmorton Street Fort Worth, Texas 76102–6311.	May 6, 1998	480596
Texas: Webb (FEMA Docket No. 7252).	City of Laredo	July 2, 1998 July 9, 1998 *Laredo Morning News*.	The Honorable Saul N. Ramirez, Jr. Mayor, City of Laredo P.O. Box 579 Laredo, Texas 78042–0579.	May 26, 1998	480651
Texas: Gregg and Harrison (FEMA Docket No. 7252).	City of Longview ..	June 19, 1998 June 26, 1998 *Longview News-Journal*.	The Honorable David McWhorter Mayor, City of Longview P.O. Box 1952 Longview, Texas 75606–1952.	May 7, 1998	480264
Texas: Collin (FEMA Docket No. 7252).	City of Plano	June 24, 1998 July 1, 1998 *Plano Star Courier*.	The Honorable John Longstreet Mayor, City of Plano P.O. Box 860358 Plano, Texas 75086–0358.	May 29, 1998	480140
Texas: Collin (FEMA Docket No. 7252).	City of Plano	July 22, 1998 July 29, 1998 *Plano Star Courier*.	The Honorable John Longstreet Mayor, City of Plano P.O. Box 860358 Plano, Texas 75086–0358.	June 22, 1998	480140
Texas: Fort Bend (FEMA Docket No. 7252).	City of Sugar Land	June 17, 1998 June 24, 1998 *Fort Bend Star*.	The Honorable Dean Hrbacek Mayor, City of Sugar Land P.O. Box 110 Sugar Land, Texas 77487–0110.	May 8, 1998	480234
Texas: Denton (FEMA Docket No. 7252).	City of The Colony	June 19, 1998 June 26, 1998 *The Leader*.	The Honorable Mary B. Watts Mayor, City of The Colony City Hall 5151 North Colony Boulevard The Colony, Texas 75056.	May 19, 1998	481581

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 26, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–29135 Filed 10–29–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7260]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arizona: Maricopa	Unincorporated Areas.	October 23, 1998 ..... October 30, 1998 ..... *Arizona Republic*	The Honorable Janice K. Brewer ..... Chairman, Maricopa County Board of Supervisors. 301 Jefferson Street ..... Phoenix, Arizona 85003	September 23, 1998.	040037
Arizona: Maricopa	City of Phoenix	October 23, 1998 ..... October 30, 1998 ..... *Arizona Republic*	The Honorable Skip Rimsza ..... Mayor, City of Phoenix ..... 200 West Washington Street, 11th Floor. Phoenix, Arizona 85003–1611	September 23, 1998.	040051

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
California: Los Angeles.	Unincorporated Areas.	October 22, 1998 ..... October 29, 1998 ..... *Daily Commerce*	The Honorable Yvonne Burke ..... Chairperson, Los Angeles County Board of Supervisors. 500 West Temple Street, Suite 821 ... Los Angeles, California 90012	September 18, 1998.	065043
California: San Diego.	City of San Diego	September 23, 1998 ..... September 30, 1998 ..... *San Diego Union-Tribune*	The Honorable Susan Golding ..... Mayor, City of San Diego ..... 202 C Street, 11th Floor ..... San Diego, California 92101	August 24, 1998 ..	060295
Colorado: Jefferson	City of Lakewood	October 15, 1998 ..... October 22, 1998 ..... *Jefferson Sentinel*	The Honorable Linda Morton ..... Mayor, City of Lakewood ..... 445 South Allison Parkway ..... Lakewood, Colorado 80226–3105	September 24, 1998.	085075
Iowa: Polk	City of Des Moines.	October 16, 1998 ..... October 23, 1998 ..... *Des Moines Register*	The Honorable Preston A. Daniels .... Mayor, City of Des Moines ..... 400 East First Street ..... Des Moines, Iowa 50309	January 21, 1999	190227
Iowa: Polk	City of West Des Moines.	October 16, 1998 ..... October 23, 1998 ..... *Western Express*	The Honorable Gene Meyer ..... Mayor, City of West Des Moines ..... P.O. Box 65320 ..... West Des Moines, Iowa 50265	January 21, 1999	190231
Iowa: Polk	City of Windsor Heights.	October 16, 1998 ..... October 23, 1998 ..... *Western Express*	The Honorable Donald C. Steele ..... Mayor, City of Windsor Heights ..... 1133 66th Street ..... Windsor Heights, Iowa 50311	January 21, 1999	190687
Kansas: Kingman ..	City of Kingman ...	September 25, 1998 ..... October 2, 1998 ..... *Kingman Leader Courier* ..	The Honorable Jack D. Ford ..... Mayor, City of Kingman ..... P.O. Box 168 ..... Kingman, Kansas 67068	December 31, 1998.	200183
Kansas: Johnson ..	City of Lenexa	October 2, 1998 ..... October 9, 1998 ..... *Olathe Daily News*	The Honorable Joan Bowman ..... Mayor, City of Lenexa ..... City Hall ..... 12350 West 87th Street Parkway ..... Lenexa, Kansas 66215	September 2, 1998.	200168
Kansas: Johnson ..	City of Olathe	September 23, 1998 ..... September 30, 1998 ..... *Olathe Daily News*	The Honorable Larry L. Campbell ..... Mayor, City of Olathe ..... P.O. Box 768 ..... Olathe, Kansas 66051–0768	August 24, 1998 ..	200173
Nebraska: Sarpy ...	City of Papillion	September 16, 1998 ..... September 23, 1998 ..... *The Papillion Times*	The Honorable Pete Goodman ..... Mayor, City of Papillion ..... City Hall ..... 122 East Third Street ..... Papillion, Nebraska 68046	August 14, 1998 ..	315275
Nevada: Clark	Unincorporated Areas.	September 23, 1998 ..... September 30, 1998 ..... *Las Vegas Review Journal.*	The Honorable Yvonne Atkinson Gates. Chairperson, Clark County Board of Supervisors. 500 Grand Central Parkway ..... Las Vegas, Nevada 89155	August 28, 1998 ..	320003
New Mexico: Bernalillo.	City of Albuquerque.	October 8, 1998 ..... October 15, 1998 ..... *Albuquerque Journal*	The Honorable Jim Baca ..... Mayor, City of Albuquerque ..... P.O. Box 1293 ..... Albuquerque, New Mexico 87103	September 11, 1998.	350002
New Mexico: Bernalillo.	City of Albuquerque.	October 23, 1998 ..... October 30, 1998 ..... *Albuquerque Journal*	The Honorable Jim Baca ..... Mayor, City of Albuquerque ..... P.O. Box 1293 ..... Albuquerque, New Mexico 87103	September 18, 1998.	350002
Texas: Bexar	City of Alamo Heights.	October 8, 1998 ..... October 15, 1998 ..... *North San Antonio Times*	The Honorable Robert Biechlin ..... Mayor, City of Alamo Heights ..... 6116 Broadway ..... San Antonio, Texas 78209	January 13, 1999	480036
Texas: Brazos	City of Bryan	October 20, 1998 ..... October 27, 1998 ..... *Bryan-College Station Eagle.*	The Honorable Lonnie Stabler ..... Mayor, City of Bryan ..... P.O. Box 1000 ..... Bryan, Texas 77805	September 18, 1998.	480082
Texas: Denton and Dallas.	City of Carrollton ..	September 11, 1998 ..... September 18, 1998 ..... *Metrocrest News*	The Honorable Milburn Gravley ..... Mayor, City of Carrollton ..... P.O. Box 110535 ..... Carrollton, Texas 75011–0535	August 19, 1998 ..	480167

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Texas: Denton	City of Denton	September 23, 1998 September 30, 1998 *Denton Record Chronicle*	The Honorable Jack Miller Mayor, City of Denton 215 East McKinney Street Denton, Texas 76201	August 24, 1998	480194
Texas: Denton	Unincorporated Areas.	September 11, 1998 September 18, 1998 *Denton Record Chronicle*	The Honorable Jeff Moseley Denton County Judge Courthouse-on-the-Square 110 West Hickory Street Denton, Texas 76201	August 19, 1998	480774
Texas: Denton	City of Highland Village.	October 21, 1998 October 28, 1998 *Lewisville News*	The Honorable Austin Adams Mayor, City of Highland Village City Hall 1800 F.M. 407 Highland Village, Texas 75077	September 21, 1998.	481105
Texas: Denton	City of Lewisville	September 11, 1998 September 18, 1998 *Lewisville News*	The Honorable Bobbie J. Mitchell Mayor, City of Lewisville P.O. Box 299022 Lewisville, Texas 75029–9002	August 19, 1998	480195
Texas: Denton	City of Lewisville	October 21, 1998 October 28, 1998 *Lewisville News*	The Honorable Bobbie J. Mitchell Mayor, City of Lewisville P.O. Box 299002 Lewisville, Texas 75029–9002	September 21, 1998.	480195
Washington: Grays Harbor.	City of Aberdeen	October 16, 1998 October 23, 1998 *The Daily World*	The Honorable Chuck Gurrad Mayor, City of Aberdeen 200 East Market Street Aberdeen, Washington 98520	September 3, 1998.	530058
Washington: King	City of Bellevue	October 16, 1998 October 23, 1998 *The Eastside Journal*	The Honorable Don Davidson Mayor, City of Bellevue P.O. Box 90012 Bellevue, Washington 98009–9102	September 10, 1998.	530074
Washington: Grays Harbor.	City of Cosmopolis	October 15, 1998 October 22, 1998 *Montesano Vidette*	The Honorable Jerry Raines Mayor, City of Cosmopolis P.O. Box G Cosmopolis, Washington 98537	September 3, 1998.	530059

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 26, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–29136 Filed 10–29–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALASKA	
Nenana (City), (Unorganized Borough) (FEMA Docket No. 7254)	
Tanana River:	
Approximately 850 feet upstream of Highway Bridge	*355
Approximately 2,000 feet upstream of Railway Bridge ..	*357
Maps are available for inspection at the City of Nenana City Hall, 3 Market Street, Nenana, Alaska.	
ARIZONA	
Yavapai County (Unincorporated Areas) (FEMA Docket No. 7246)	
Dry Creek:	
Approximately 1,500 feet downstream of Sunset Hills Drive	*4,025
Approximately 2,000 feet upstream of Sunset Hills Drive	*4,058
Maps are available for inspection at the Yavapai County Flood Control District, 255 East Gurley Street, Prescott, Arizona.	
CALIFORNIA	
Yolo County (Unincorporated Areas) (FEMA Docket No. 7242)	
Dry Creek:	
Approximately 1,900 feet downstream of private road (wooden bridge)	*121
Approximately 450 feet downstream of private road (wooden bridge)	*121
Approximately 650 feet upstream of County Road 33	*175
Maps are available for inspection at the Yolo County Community Development Agency, 292 West Beamer Street, Woodland, California.	
Yolo County (Unincorporated Areas) (FEMA Docket No. 7242)	
South Fork Willow Slough:	
Approximately 1,350 feet downstream of Interstate 505	*141
Approximately 1,500 feet upstream of County Road 89	*152
Approximately 1,650 feet upstream of County Road 89	*152
Cottonwood Slough:	
Approximately 1,120 feet downstream of Interstate 505	*141
Approximately 2,770 feet upstream of Interstate 505	*147
Dry Slough:	
At confluence with Willow Slough	*53
Approximately 980 feet above County Road 95	*93
North Davis Drain:	
At Southern Pacific Railroad	*46
At divergence from Dry Slough	*85
Union School Slough:	
At confluence with Willow Slough	*66
Approximately 790 feet upstream of County Road 95	*91
Unnamed Tributary of Union School Slough:	
At confluence with Union School Slough	*72
At divergence from Dry Slough	*78
Unnamed Tributary of Willow Slough:	
At upstream side of Road 96	*81
At divergence from Dry Slough	*88
Unnamed Overflow Area South of County Road 31:	
Approximately 1,300 feet downstream of County Road 97	*71
At divergence from Dry Slough	*85
Willow Slough:	
Approximately 275 feet downstream of Southern Pacific Railroad	*47
Approximately 650 feet upstream of County Road 95	*92
Willow Slough Left Overbank No. 1:	
At convergence with Willow Slough Left Overbank No. 2	*83
At divergence from Willow Slough	*83
Willow Slough Left Overbank No. 2:	
At confluence with Willow Slough	*76
At divergence from Willow Slough	*83
Yolo County Airport Drainage Channel:	
At confluence with Unnamed Tributary of Willow Slough	*86
Approximately 7,750 feet upstream of confluence with Unnamed Tributary of Willow Slough	*88
Maps are available for inspection at the Community Development Agency, 292 West Beamer Street, Woodland, California.	
COLORADO	
Loveland (City), Larimer County (FEMA Docket No. 7250)	
Big Thompson River:	
Approximately 3,800 feet downstream of U.S. Highway 287	*4,922
Approximately 550 feet downstream of U.S. Highway 287	*4,926
Maps are available for inspection at Building and Development Services, 500 East Third Street, Loveland, Colorado.	
Larimer County (Unincorporated Areas) (FEMA Docket No. 7246)	
Coal Creek:	
Approximately 3,000 feet downstream of Fourth Street	*5,166
Approximately 3,000 feet upstream of Windsor Ditch	*5,230
Maps are available for inspection at the Engineering Department, 218 West Mountain, Fort Collins, Colorado.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
LOUISIANA	
Delhi (Town), Richland Parish (FEMA Docket No. 7250)	
Bayou Macon:	
Approximately 1 mile downstream of U.S. 80	*77
Approximately 0.5 mile upstream of U.S. 80	*77
Maps are available for inspection at 202 Broadway, Delhi, Louisiana.	
OKLAHOMA	
Osage County (Unincorporated Areas) (FEMA Docket No. 7254)	
Horsepin Creek:	
Approximately 1,400 feet downstream of Southern Pacific Railroad	*637
Approximately 310 feet downstream of Southern Pacific Railroad	*638
Approximately 1,060 feet upstream of Southern Pacific Railroad	*643
Maps are available for inspection at 628 Kinnekah, Pawhuska, Oklahoma.	
TEXAS	
Mount Pleasant (City), Titus County (FEMA Docket No. 7250)	
Hart Creek Tributary:	
Approximately 1,300 feet downstream of Alexander Road	*322
Approximately 130 feet upstream of State Highway 49	*359
Approximately 290 feet downstream of West Sixth Street	*407
Tributary 1:	
At confluence with Hart Creek Tributary	*330
Approximately 1,300 feet upstream of confluence with Hart Creek Tributary	*344
Tributary 2:	
At confluence with Hart Creek Tributary	*358
Approximately 1,900 feet upstream of Stark Street	*370
Tributary 3:	
At confluence with Hart Creek Tributary	*377
Approximately 1,620 feet upstream of West First Street	*384
Maps are available for inspection at the City of Mount Pleasant Public Works Facility, 1412 North Washington, Mount Pleasant, Texas.	
Muenster (City), Cooke County (FEMA Docket No. 7250)	
Brushy Elm Creek:	
Approximately 400 feet downstream of Eddy Road	*957
Approximately 150 feet downstream of U.S. Highway 82	*963
Approximately 200 feet downstream of Ash Street	*967
Tributary 1:	
Approximately 150 feet downstream of U.S. Highway 82	*975
Approximately 270 feet upstream of Fifth Street	*997
Approximately 2,150 feet upstream of Seventh Street	*1,020
Tributary 2:	
Approximately 150 feet downstream of Ash Street	*971
Approximately 1,100 feet upstream of Ash Street	*995
Tributary 3 Emergency Spillway:	
At confluence with Tributary 3	*965
Approximately 900 feet downstream of Sixth Street	*1,000
Tributary 3:	
At confluence with Tributary 3 Emergency Spillway	*965
At Sixth Street	*1,000
Approximately 1,200 feet upstream of confluence with Tributary 4	*1,018
Tributary 4:	
At confluence with Tributary 3	*1,007
Approximately 180 feet upstream of confluence with Tributary 3	*1,008
Maps are available for inspection at the City of Muenster City Hall, 400 North Main, Muenster, Texas.	
South Padre Island (Town), Cameron County (FEMA Docket No. 7250)	
Gulf of Mexico:	
Approximately 150 feet northeast of intersection of Gulf Street and Gulf Boulevard	*12
Approximately 500 feet northeast of intersection of Gulf Street and Gulf Boulevard	*16
Laguna Madre:	
At intersection of Palm Street at Laguna Boulevard	*8
Maps are available for inspection at the Town of South Padre Island Building Department, 4405 Padre Boulevard, South Padre Island, Texas.	
Cameron County (Unincorporated Areas) (FEMA Docket No. 7250)	
Gulf of Mexico:	
Approximately 850 feet south of Old Queen Isabella Causeway	*12
Approximately 600 feet northeast of the northern corporate limits	*16
Laguna Madre:	
Approximately 4,000 feet south of Old Queen Isabella Causeway	*8
Approximately 2,000 feet west of Padre Boulevard	*8
Maps are available for inspection at the Cameron County Engineering Office, 805 West Price Road, Brownsville, Texas.	
WYOMING	
East Thermopolis (Town), Hot Springs County (FEMA Docket No. 7254)	
Bighorn River:	
At the northwesternmost corporate boundary, approximately 500 feet downstream of Broadway Street	*4,320
At the southwestern corporate boundary, approximately 720 feet upstream of Broadway Street	*4,323
Maps are available for inspection at the Town of East Thermopolis Town Hall, 112 East Warren, Thermopolis, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 26, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–29133 Filed 10–29–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

[Docket No. RSPA–97–2905 (HM–166Y)]

RIN 2137–AC41

Transportation of Hazardous Materials; Miscellaneous Amendments; Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On July 10, 1998, RSPA published a final rule under Docket RSPA–97–2905 (HM–166Y) which amended the HMR by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiative. The intent of the final rule was to provide relief from certain regulatory requirements and to update and clarify certain other requirements. In this document, RSPA denies three petitions for reconsideration to the July 10, 1998 final rule concerning the

amendments relating to IM portable tanks.

DATES: Effective October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, (202) 366–8553, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On July 10, 1998, RSPA published a final rule under Docket RSPA–97–2905 (HM–166Y) (63 FR 37454) which amended the HMR by incorporating a number of miscellaneous changes. The effective date of the final rule was October 1, 1998, but compliance with all the changes made in the rule was permitted beginning August 25, 1998.

The third sentence in 49 CFR 177.834(h) reads: ''Discharge of contents of any container, other than a cargo tank, must not be made prior to removal from the motor vehicle.'' The final rule contains a revision to relax § 177.834(h) and to add a new paragraph (o) to permit an IM portable tank to be unloaded while remaining on a transport vehicle with the power unit attached, if the tank meets the outlet requirements in § 178.345–11 and is attended during the unloading, as currently required for cargo tank motor vehicles under § 177.834(i). Section 178.345–11(b)(1)(iii) requires that the remote means of closure must be capable of thermal activation when required by part 173 for materials which are flammable, pyrophoric, oxidizing, or poisonous liquids. This important safety feature provides for the valve to close in a fire situation, without operator intervention.

After publication of the final rule, RSPA received three petitions for reconsideration addressing the revisions to § 177.834. The three petitioners, the Tank Container Association (TCA), Merck & Co., Inc. and the Hazardous Materials Advisory Council (HMAC) requested that RSPA reconsider the October 1, 1998 mandatory compliance date. The petitioners contend that most existing IM portable tanks are not fitted with a fusible link, as prescribed in § 178.345–11, and that fitting the IM portable tanks with the device by October 1, 1998, is not feasible. All three petitioners stated that fusible links are not available from the IM portable tank valve suppliers. The petitioners' request for an extension of the compliance date ranged from one year to five years. In addition, HMAC requested that RSPA defer implementation of § 177.834(o) and enforcement of current § 177.834(h).

TCA stated in its comments to the notice of proposed rulemaking under Docket RSPA–97–2905 that compliance with the requirement in § 178.345–11(b)(1)(iii) for the remote means to be capable of thermal activation was not possible. On September 2, 1998, RSPA representatives met with TCA representatives and a representative from Fort Vale Engineering Limited, a manufacturer of IM portable tank valves, to obtain additional information on TCA's comment concerning compliance with § 178.345–11(b)(1)(iii). These industry representatives stated that the fusible links for IM portable tanks were not available until recently and that time would be needed to field test and install the devices on the tanks.

RSPA disagrees with the petitioners' requests. Delaying the October 1, 1998 effective date would deny the relief provided in the final rule, that is, the ability to unload an IM portable tank while it remains on a motor vehicle. RSPA understands that many IM portable tanks do not currently conform to the provisions in the final rule. However, this is not a basis for denying relief to operators of IM portable tanks which now, or in the near future, will conform to the new provisions. Further, RSPA does not believe there is any basis for granting HMAC's request for a one year deferral of enforcement of § 177.834(h). RSPA believes that unloading an IM portable tank in the same manner as a cargo tank, but without the same outlet requirements, would pose increased safety risks in a fire situation when an operator is not able to manually activate the closure. Accordingly, under authority of 49 U.S.C. 5101–5127; 49 CFR 1.53, the three petitions for reconsideration are denied.

Issued in Washington, DC, on October 26, 1998, under the authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 98–29178 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995, Notice No. 6]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Announcement of random drug testing rate.

SUMMARY: RSPA has received and evaluated the 1997 Management Information System (MIS) Data Collection forms for the drug testing of pipeline industry personnel. The RSPA determined that the random positive drug testing rate for the pipeline industry for the period of January 1, 1997, through December 31, 1997, is 0.7 percent. Therefore, the minimum random drug testing rate will be maintained at 25 percent of covered pipeline employees for the period of January 1, 1999, through December 31, 1999.

DATES: Effective January 1, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Catrina Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 7128, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–6199, Fax: (202) 366–4566, e-mail: catrina.pavlik@RSPA.dot.gov. Information is also available on the Office Pipeline Safety's internet home pages at 'OPS.dot.gov.'

SUPPLEMENTARY INFORMATION: In a final rule published on December 23, 1993 (58 FR 68257), RSPA announced that it would require operators of gas, hazardous liquid and carbon dioxide pipelines, and liquefied natural gas facilities, who are subject to 49 CFR parts 192, 193 and 195, to implement, maintain, and submit an annual report of their drug testing program data. Operators with 51 or more covered employees are required to submit this information on an annual basis. Operators with 50 or fewer covered employees are required to maintain this information, and RSPA randomly selected 100 operators in this category to submit their data. The drug testing statistical data is essential for RSPA to analyze its current approach to deterring and detecting illegal drug abuse in the

pipeline industry, and, as appropriate, plan a more efficient and effective approach. In 1997, RSPA lowered the random drug testing rate to 25 percent. Since the positive random testing rate continues to be less than 1 percent industry-wide, the RSPA announces in accordance with § 199.11(c)(3), that the minimum random drug testing rate will be maintained at 25 percent of covered pipeline employees for the period of January 1, 1999, through December 31, 1999.

Submission of MIS reports are due to the Office of Pipeline Safety, Research and Special Programs Administration, DPS–23, Room 7128, 400 7th Street SW., Washington, DC 20590, not later than March 15 of each calendar year. Notice of statistical data will be published in the future to report results of each calendar year's MIS Data Collection results. At that time, the RSPA will also publish whether or not the random rate will be reduced or increased for the pipeline industry pursuant to § 199.11.

Issued in Washington, DC on October 23, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–29081 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AE99

Amendment by Brazil to Appendix III Listing of Bigleaf Mahogany Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule announces an amendment to the Appendix III listing of bigleaf mahogany (*Swietenia macrophylla*) under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). The species in the Americas and its logs, sawn wood, and veneer sheets have been included in Appendix III since November 1995, based on an action by the Government of Costa Rica. The Government of Brazil has supplied information to the CITES Secretariat to independently include the species in Appendix III to support its national legislation for the species and the need for cooperation of other CITES countries in controlling the international trade.

DATES: *Effective Date:* This rule is effective on October 30, 1998.

Applicability Date: The change to the Appendix III listing for the Brazilian population of the species as set forth in this rule entered into force on July 26, 1998, under the terms of the Convention.

ADDRESSES: Please send correspondence concerning the amendment announced in this rule to Chief, Office of Scientific Authority, ARLSQ 750; U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703–358–2276. Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

The text of the Appendix III notification from the Convention's Secretariat is available on request, and related materials are available for public inspection by appointment from 8:00 a.m. to 4:00 p.m. Monday through Friday, at the above address in Arlington, Virginia.

Please send certificate/permit questions or any applications concerning this regulation to Chief, Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 700; Arlington, Virginia 22203; fax number 703–358–2281. Express and messenger deliveries should be addressed to Chief, Office of Management Authority, at that Arlington address.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, phone 703–358–1708, fax 703–358–2276, E-mail r9osa@mail.fws.gov; or the Office of Management Authority, telephone 800–358–2104, E-mail r9oma__cites@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249) regulates international trade in certain animal and plant species. The species for which trade in particular specimens is controlled are listed in one of three appendices. Appendix III is comprised of species that any Party country has informed the CITES Secretariat are subject to regulation within its jurisdiction for purposes of restricting or preventing exploitation, and for which it needs the cooperation of other Parties to control the specimens in international trade. Resolution Conf. 9.25 (Rev.) provides guidance to assist Parties in determining individually whether a species would qualify for inclusion in Appendix III.

Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless the trade in specimens is strictly controlled. Appendix II also can include species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other traded species). Resolution Conf. 9.24 provides criteria and guidance to assist the Parties in determining together (usually at a Conference of the Parties or COP) whether a species would qualify for inclusion in Appendix I or Appendix II. Under CITES, only those species included in Appendix I are banned from international trade for primarily commercial purposes.

The present rule revises the list of CITES species that is reproduced in the U.S. Code of Federal Regulations (CFR) at 50 CFR 23.23(f). The current information following COP10 (see below) was published in the **Federal Register** of August 22, 1997 (62 FR 44627). As advanced by the Government of Brazil pursuant to Article XVI paragraph 1 of the Convention, the present rule acknowledges that now Brazil, Bolivia, and Costa Rica have added *Swietenia macrophylla* (bigleaf mahogany (also respectively called mogno, mara, or caoba)) to Appendix III in support of their domestic conservation measures and need for cooperation of other Parties. Brazil in October 1965 at an inter-American conference had put this species in the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and on April 3, 1992 (by Decree N^{o} 37–N) had included the species with other Brazilian species considered to be at risk.

The species continues to be included in CITES Appendix III in the Americas (i.e., South America, Central America, the Caribbean, and North America), including only its logs, sawn wood, and veneer sheets as the parts or derivatives covered by the provisions of the Convention. Thus, products such as finished furniture are excluded. Moreover, export of specimens from plantations located outside the Americas is not regulated. (At COP10 in

June 1997, the categories saw-logs, sawn wood, and veneers were revised slightly to the above for several such listings; cf. 62 FR 44627.)

The CITES Secretariat notified all Party countries on April 27, 1998 (in an unnumbered Notification), of this addition to Appendix III by Brazil of this species. In accordance with Article XVI paragraph 2, such an amendment becomes effective 90 days after notification, in this case on July 26, 1998. All the shipments of bigleaf mahogany originating from Brazil that are exported on or after that date must be accompanied by the appropriate documentation as required by CITES (usually an export permit), which is to be presented upon import to the Party countries.

International trade in Appendix III species and their parts and derivatives that are specified as being included requires the issuance of either an export permit, a certificate of origin, a re-export certificate, or a pre-Convention certificate, by the exporting or the re-exporting Party. An export permit, which signifies that the specimens were not obtained in contravention of the laws of that country for conservation, is required if the shipment originates from the Party that added the species to Appendix III, in this case Brazil, as well as Bolivia, which independently included its population in Appendix III, effective March 19, 1998 (see **Federal Register** of May 14, 1998, 63 FR 26739–26741); and Costa Rica, which had earlier added the species to Appendix III, effective November 16, 1995 (see **Federal Register** of February 22, 1996, 61 FR 6793–6795).

Export from the other countries in the Americas requires the issuance of either a certificate from the country of origin, a certificate from the country of re-export, or a pre-Convention certificate (from the country of export). (The species is native from Bolivia and Brazil to Mexico.) These documents legally verify either: (1) that the specimens originated in a non-listing country; (2) that they are being re-exported after a legal importation in accordance with CITES; or (3) that they were acquired before the provisions of the Convention applied to them. All the countries of South America, Central America, and North America and some countries in the Caribbean are Parties to the Convention. Article X of CITES and Resolution Conf. 9.5 specify the requirements for comparable documentation from countries not party to the treaty. The pre-Convention date for *Swietenia macrophylla* (bigleaf mahogany) remains November 16, 1995.

The Convention's Secretariat and U.S. Office of Management Authority in 1995 (and sometimes since) have inquired regarding certificates of origin or permits that exporting range countries issue for shipments of the specimens of this species (i.e., logs, sawn wood, and veneer sheets). Responses have been received from Mexico, Guatemala, Belize, Honduras, Nicaragua, Venezuela, and Peru (cf. Secretariat's April 27, 1998, Notification No. 1998/15). Costa Rica, Bolivia, and Brazil, as Parties listing the species in Appendix III, use their regular documents (e.g., permits). Importation or exportation of CITES-regulated plant specimens must be through particular designated U.S. Department of Agriculture ports (50 CFR 24.12), which includes additional ports designated for logs and lumber. For information on the types of documents required for such mahogany importation into the United States, as well as requests for any documents needed for such re-export or export from the United States, contact the Service's Office of Management Authority (address and phone number above).

Any Party at any time may enter a reservation on a species (or pertinent population) added to Appendix III. A Party that has entered a reservation is treated as a country that is not party to the Convention with respect to the trade in the species concerned (until such time as that Party withdraws its reservation). The limited effects of a reservation in alleviating importers and exporters from documentation requirements with the other CITES Parties were thoroughly discussed in a **Federal Register** notice on November 17, 1987 (52 FR 43924). In a subsequent **Federal Register** notice of March 28, 1988 (53 FR 9945; see also 53 FR 12497, April 14, 1988), the Service made a procedural change in requesting comments about such reservations for species added to Appendix III. Because the effects of such a reservation are limited, and there is also no time limit for reserving on a species or a population added to Appendix III, a proposed rule is not published at the time the list in § 23.23 is amended. Regardless of any U.S. decision to enter a reservation, this particular amendment to Appendix III enters into force on July 26, 1998, under terms of the Convention. Publishing this rule informs the public of this international action while still affording those interested the opportunity and time to assess the merits of entering a reservation. Therefore, good cause exists to omit a proposed-rule notice and public-comment process, since it is unnecessary and contrary to the public interest (5 U.S.C. 553(b)). Because bigleaf mahogany in the Americas was added to Appendix III of the Convention effective on November 16, 1995, and because of the other reasons stated herein, the Service finds that good cause exists for making this rule effective upon its date of publication (5 U.S.C. 553(d)). Accordingly, 50 CFR 23.23(f) is amended at the conclusion of this document.

At the tenth meeting of the Conference of the Parties to the Convention (COP10) in June 1997, the United States was among 67 of 112 Parties that voted to include this species in Appendix II; this 60 percent of the Parties in favor, however, fell short of the two-thirds majority needed for adoption of the proposal (see the **Federal Register** notice of August 22, 1997 (62 FR 44627)). After the vote, Brazil in plenary stated its intention to include the species in Appendix III. On September 24, 1997, the Brazilian Ambassador to the United States sent a letter to the U.S. Fish and Wildlife Service soliciting comments on their contemplated listing of bigleaf mahogany in Appendix III (cf. Resolution Conf. 9.25 (Rev.)). The Service replied in a letter of October 10, 1997, to the Brazilian Ambassador in Washington, D.C., providing U.S. interagency-approved comments that supported Brazil's consideration of the Appendix III listing, expressed hope for a prompt conclusion of the consultations and listing, and offered cooperation and partnership to help convey the meaning of the action (*e.g.*, to U.S. consumers). This Appendix III listing thus can assist in curtailing illegal international trade (see Resolution Conf. 9.25 (Rev.) first paragraph b)), which may help prevent severe decline so that the species does not become endangered in the wild.

The Service has not recommended entering a reservation on the enhanced status in Appendix III for the Brazilian population of the species. Consideration for doing so would be given if valid and compelling reasons are shown that implementation of this listing would be contrary to the interests or laws of the United States. The Service now solicits comments on whether to enter a reservation, and particularly seeks any new information that becomes available. The Service will consider all comments received, and if appropriate, will consider recommending that the United States submit a reservation to the depositary government (which is Switzerland).

Note

The Department has determined that changes to the Convention Appendices, which result from actions of the Parties to the treaty, do not require preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). This document recognizes Brazil's decision to include one of their native species in CITES Appendix III and serves as public notice of their decision to potential importers and exporters, as well as other persons who may have a need to know of this Appendix III amendment. Because this amendment to 50 CFR 23.23 is simply a notification to the public on an action that has been taken by Brazil under the terms of CITES, this document does not constitute a ''rule'' for purposes of the Administrative Procedure Act (5 U.S.C. 551 (4)). Accordingly, the provisions of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Small Business Regulatory Enforcement Fairness Act of 1966 do not apply to this notice.

No new information collection is required as a result of this rulemaking action. For any permits or certificates required for re-export from the United States of this or any other CITES-listed species, the Office of Management and Budget has approved the collection of information under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1018–0093 and 1018–0012.

This document was prepared by Dr. Bruce MacBryde and Dr. Susan Lieberman, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Regulation Promulgation

Accordingly, for the reasons set out above in this document, the Service amends Part 23 of Title 50, chapter I, subchapter B, of the Code of Federal Regulations as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. Section 23.23(f) is amended in the table by revising the entry for *Swietenia macrophylla* under the plant family Meliaceae to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
* * * * * * *			
PLANT KINGDOM.	PLANTS.		
* * * * * * *			
Family Meliaceae	Mahogany family		
* * * * * * *			
Swietenia macrophylla populations in the Americas (including logs, sawn wood, and veneer sheets, but no other parts or derivatives, *e.g.,* products).	Bigleaf mahogany	III (Bolivia, Brazil, Costa Rica)	11/16/95
* * * * * * *			

Dated: October 13, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–28927 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D.102698A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the annual commercial quota for red snapper was reached on October 15, 1998. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective 12:01 a.m., local time, November 1, 1998, until noon, local time, February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for

red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 1998. Those regulations split the red snapper commercial fishing season into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.06 million lb (1.39 million kg)) available, and the second commencing at noon on September 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 15th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached or is projected to be reached by publishing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the annual commercial quota of 4.65 million lb (2.11 million kg) for red snapper was reached on October 15, 1998. The commercial red snapper fishery was closed on October 15, 1998, at noon and was scheduled to reopen on November 1, 1998. However, because NMFS has determined that the commercial red snapper quota was reached on October 15, the commercial red snapper fishery will not reopen on November 1; it will remain closed until noon on February 1, 1999.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, such possession during a closed period is prohibited. The recreational red snapper fishery was closed on September 30, 1998 (63 FR 45760).

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Dated: October 26, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29090 Filed 10–27–98; 1:58 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980715175–8254–02; I.D. 070198B]

RIN 0648–AL35

Fisheries of the Northeastern United States; Vessel Monitoring System Power Down Exemption

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMP). This action changes the name ''Vessel Tracking System (VTS)'' to ''Vessel Monitoring System (VMS)'' and changes the VMS operating requirements for vessels to allow the VMS unit to be turned off if the vessel is out of the water continuously for more than 72 consecutive hours, provided the owner of the vessel obtains and complies with a letter of exemption issued to the vessel. The change in VMS operating requirements is necessary to address the lack of available power required to keep VMS units operational when vessels are removed from the water for repair and maintenance.

DATES: Effective November 30, 1998.

ADDRESSES: Copies of the Regulatory Impact Review supporting this action may be obtained from Jon C. Rittgers, Acting Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Jon C. Rittgers and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20502 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on July 28, 1998 (63 FR 40253). Details of this action are described in the preamble to the proposed rule and will not be repeated here.

Approved Management Measures

Under current regulations, required VTS units, hereinafter referred to as VMS units, in the Atlantic sea scallop fishery must be fully operational at all times and transmit a signal indicating a vessel's accurate position at least every hour, 24 hours a day, without interruption, throughout the year. A vessel out of the water for repair and maintenance may not have an operational power supply available with which to power its VMS unit so that it may transmit hourly position reports. This action amends the operating requirements for a VMS to allow vessels in those fisheries to turn off the VMS unit if the vessel will be out of the water continuously for more than 72 hours. Owners of such vessels must first obtain a letter of exemption issued to the vessel from the Regional Administrator. This amendment is consistent with the primary intent of the original requirement, which was to monitor the at-sea activity of these vessels for compliance with the regulatory requirements.

In addition to the management measure described above, this final rule also changes the names and related definitions for ''Vessel Tracking System (VTS)'' to ''Vessel Monitoring System (VMS)'' and ''VTS unit'' to ''VMS unit'' to provide consistency with other NMFS Regions.

Comments and Responses

NMFS received written comments on the proposed rule from one individual and one fishing industry association. Specific comments are discussed and responded to here.

Comment: The fishing industry association supports implementation of the amendment that would allow vessels to turn off the VMS unit if the vessel will be out of the water continuously for more than 72 consecutive hours.

Response: The comment has been noted and the regulatory amendment is approved.

Comment: One individual and one fishing industry association expressed concern over the requirement of requiring VMS units to be fully operational at all times and transmit a signal indicating a vessel's accurate position at least every hour, 24 hours a day, without interruption, throughout the year. They state that most docks do not have shore power hook-ups, and

many do not have generators, making the 24–hours a day requirement impractical.

Response: NMFS understands this problem and may further adjust the VMS power down regulations through a regulatory amendment, if information becomes available to support such a change.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

The rule contains one new collection-of-information requirement subject to the PRA. The collection-of-information requirement has been approved by the Office of Management and Budget, OMB control number OMB 0648–0202.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this data collection to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 22, 1998.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definitions for ''Vessel Tracking System (VTS)'' and ''VTS unit'' are removed, and the definitions for ''Vessel Monitoring System (VMS)'' and ''VMS unit'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Vessel Monitoring System (VMS) means a vessel monitoring system as set forth in § 648.9 and approved by NMFS for use by scallop and NE multispecies vessels, as required by this part.

VMS unit means a device installed on board a vessel used for vessel monitoring and transmitting the vessel's position as required by this part.

* * * * *

3. In § 648.9, the acronym ''VTS'' in the section heading is replaced with the acronym ''VMS'' and paragraph (b)(2), the first sentence of paragraph (b)(5), and paragraphs (b)(7) and (c) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(b) * * *

(2) The VMS shall be fully automatic and operational at all times, regardless of weather and environmental conditions, unless exempted under paragraph (c)(2) of this section.

* * * * *

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless exempted under paragraph (c)(2) of this section. * * *

* * * * *

(7) The VMS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in a file format acceptable to NMFS.

* * * * *

(c) *Operating requirements.* (1) All required VMS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, unless such vessel is exempted under paragraph (c)(2) of this section.

(2) *Power Down Exemption.* (i) Any vessel required to have on board a fully operational VMS unit at all times, as specified in paragraph (b)(2) of this section, is exempt from this requirement provided:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours; and

(B) A valid letter of exemption obtained pursuant to paragraph (c)(2)(ii) of this section has been issued to the vessel and is on board the vessel and the vessel is in compliance with all conditions and requirements of said letter.

(ii) *Letter of Exemption*—(A) *Application.* A vessel owner may apply for a letter of exemption from the operating requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: Sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours; the location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (i.e., the time the VMS will be turned off and turned on again).

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2)(ii)(A) of this section and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption was granted.

* * * * *

4. In addition to the amendments set forth above, the acronym ''VTS'' is replaced with the acronym ''VMS'', and the acronym ''VTSs'' is replaced with the acronym ''VMSs'' wherever they appear throughout the following places:

a. Section 648.4(c)(2)(iii)(A), (c)(2)(iv)(B), and (e)(1)(iv);

b. Section 648.7(b)(1)(i) and (b)(1)(iii);

c. Section 648.9(a), (b) introductory text, (b)(1), (b)(3)-(b)(6), (b)(8)-(b)(9), and (d)-(g);

d. Section 648.10(a), (b) introductory text, (b)(1), (b)(2), (b)(4), (b)(5), (c) introductory text, (e) introductory text, (e)(1), (e)(1)(ii), and (f)(1); and

e. Section 648.14(a)(7), (c)(2) introductory text, (c)(2)(i), (c)(2)(ii), (h)(3), and (h)(4).

[FR Doc. 98–29084 Filed 10–29–98 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 210
Friday, October 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN 1904–AA75

Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of limited reopening of the record and opportunity for public comment.

SUMMARY: The Department of Energy reopens the record of its rulemaking to revise energy conservation standards for fluorescent lamp ballasts under the Energy Policy and Conservation Act. This notice provides an opportunity for public comment regarding the Department's consideration of consumers who choose electronic ballast T–8 systems over electronic ballast T–12 systems and consumers who choose electronic ballasts over cathode cutout ballasts.

DATES: Comments must be received on or before November 30, 1998.

ADDRESSES: Written comments are welcome. Please submit 10 copies (no faxes) to: Brenda Edwards-Jones, U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts, Docket No. EE–RM–97–500, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–9127, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Pursuant to section 325 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6295, the Department of Energy (DOE) proposed to revise the energy conservation standards applicable to fluorescent lamp ballasts, as well as a variety of other consumer products. 59 FR 10464 (March 4, 1994). On January 31, 1995, the Department published a rulemaking determination that, based on comments received, it would issue a revised notice of proposed rulemaking for fluorescent lamp ballasts. 60 FR 5880 (January 31, 1995). Section 325(o)(2) requires that any amended standard be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2).

During the conduct of several workshops and in other discussions with stakeholders , two issues have arisen that the Department wishes to notice to the public prior to the issuance of a revised proposed rule.

Issue 1

In the analyses for the 1994 Proposed Rule, the February, 1996, Draft Report and the July, 1997, Draft Report regarding the potential impacts of possible energy efficiency levels for fluorescent lamp ballasts, the Department conducted the analyses by comparing magnetic ballast T–12 systems to electronic ballast T–12 systems and magnetic T–8 systems to electronic T–8 systems when evaluating efficiency levels where the consumer is faced with standard levels requiring electronic ballasts. The Department was silent on any comparison of magnetic T–12 systems to electronic ballast T–8 systems. The analyses were conducted in a manner which essentially assumed all consumers of magnetic T–12 ballast systems would replace them with electronic T–12 ballast systems. Prior to 18 months ago, there had been no comments regarding the validity or impact of conducting the analysis in this manner.

Current industry data indicates that approximately 94 percent of consumers who choose electronic ballasts choose T–8 systems. DOE has now received a number of comments that by only considering consumers purchasing T–12 ballast systems, the Department would not capture the full range of impacts likely to result from the rulemaking. During the March 18, 1997, workshop on the Revised Life Cycle Cost and Engineering Analysis of Fluorescent Lamp Ballasts, the Alliance to Save Energy, Natural Resources Defense Council and American Council for an Energy Efficient Economy (ACEEE) commented that the Department, in considering standards at the electronic ballast efficiency level, should include consideration of the benefits or costs that result when consumers choose to purchase electronic ballast T–8 systems instead of electronic ballast T–12 systems. This issue was raised again by ACEEE in its written comments of October 2, 1997, on the Draft Report on Potential Impact of Possible Energy Efficiency Levels for Fluorescent Lamp Ballasts (ACEEE, No. 14) and again in its written comments of June 5, 1998, in response to the Public Workshop on Possible Impacts of Energy Efficiency Standards for Fluorescent Lamp Ballasts conducted on April 28, 1998. (ACEEE, No. 24).

In consideration of these comments, this issue was further discussed with the National Electrical Manufacturers Association (NEMA) at a meeting on June 9–10, 1998. At this meeting, DOE and NEMA members discussed ways to compare an electronic ballast T–12 system to an electronic ballast T–8 system, including how such a comparison would require an additional normalization step to account for the lamp lumen differences. Preliminary impact analyses using a normalization approach which uses the mean characteristics representative of the most popular T–12 and T–8 lamps indicates that a shift from T–12 lamps with electronic ballasts to T–8 lamps with electronic ballasts would yield significant additional energy and life cycle cost savings. Any such market shift in lamp usage caused by a ballast standard could also have an impact on lamp manufacturers.

In a letter to the Department, dated October 16, 1998, NEMA stated that DOE should not consider the impact of any shift from T–12 systems to T–8 systems because any additional benefits would accrue from system efficiencies of the ballast and the lamp.

The Department believes its analysis of the impacts of a potential standard level on consumers, manufacturers and the nation, as prescribed by EPCA, requires the analysis to compare the marketplace before and after standards and to measure the impacts of changes. DOE believes this policy is consistent with previous rulemakings such as the Department's consideration of a possible shift from gas mobile home furnaces to electric heat if the gas mobile home furnace standards were increased.

Further, the Department believes, based on current sales, if a standard required consumers of magnetic ballast T–12 systems to purchase electronic ballasts, it is likely that many if not most of these consumers would choose to purchase electronic ballast T–8 systems. In determining the likely benefits and costs for the nation and the likely impacts on manufacturers, the Department intends to explore a range of market scenarios using different assumptions about the likely effects of a new DOE standard on ballasts on the market shares of T–8 and T–12 systems. Additionally, the Department intends to analyze both the range of life cycle costs for consumers who choose electronic ballast T–12 systems and the range of life cycle costs for consumers who choose electronic ballast T–8 systems. By this notice, the Department is soliciting public comment on whether a market shift from T–12 systems to T–8 systems is likely to occur if an energy conservation standard were set at a level requiring electronic ballasts, the extent of any such shift in terms of a percentage and whether any such shift should be considered in determining the impact of an energy conservation standard set at a level requiring electronic ballasts on consumers, manufacturers and the nation.

Issue 2

In the analyses for the 1994 Proposed Rule, the February, 1996, Draft Report and the July, 1997, Draft Report regarding the potential impacts of possible energy efficiency levels for fluorescent lamp ballasts, the Department conducted the analysis by comparing magnetic ballasts to cathode cutout ballasts when evaluating efficiency levels where the consumer is faced with standard levels requiring cathode cutout ballasts. The Department was silent on any comparison of cathode cutout ballasts to electronic ballasts. The analyses were conducted in a manner which essentially assumed all consumers of magnetic ballasts would replace them with cathode cutout ballasts. Currently cathode cutout ballasts represent approximately one percent of the magnetic ballast market.

In discussions with manufacturers after the June 9–10, 1998 meeting at NEMA, manufacturers stated a belief that when faced with such a standard, many consumers would choose electronic ballasts instead of cathode cutout ballasts. They indicated this choice would increase the impact on manufacturers who produce magnetic ballasts and requested changes in the manufacturer impact analysis, as specifically, the Government Regulatory Impact Model (GRIM), to account for this possible shift.

The Department believes its analysis of the impacts of a potential standard level on consumers, manufacturers and the nation, as prescribed by EPCA, requires the analysis to compare the marketplace before and after standards and to measure the impacts of changes. DOE believes this policy is consistent with previous rulemakings such as the Department's consideration of a possible shift from gas mobile home furnaces to electric heat if the gas mobile home furnace standards were increased.

Given the small current market share of cathode cutout ballasts, the Department believes it would be reasonable to assume that with an energy conservation standard set at the cathode cutout level, many consumers would choose electronic ballasts, even though the cathode cutout ballast would then be the lowest cost ballast. It would also be reasonable to assume that many or most of the consumers who choose electronic ballasts will also choose to convert from T–12 to T–8 lamps at the time of ballast replacement. In determining the likely benefits and costs for the nation and the likely impacts on manufacturers, the Department intends to explore a range of market scenarios using different assumptions about the likely effects of a new DOE standard on ballasts on the market shares of electronic and cathode cutout ballasts. Additionally, the Department intends to analyze both the range of life cycle costs for consumers who choose electronic ballasts and the range of life cycle costs for consumers who choose cathode cutout ballasts. By this notice, the Department is soliciting public comment on whether a market shift from cathode cutout ballasts to electronic ballasts is likely to occur if an energy conservation standard were set at a level requiring cathode cutout ballasts, the extent of any such shift in terms of a percentage, the percentage of those consumers choosing electronic ballasts who would choose T–8 systems and whether any shift should be considered in determining the impact of an energy conservation standard set at a level requiring cathode cutout ballasts on consumers, manufacturers and the nation.

Public Comment

DOE seeks comments on the following:

- In considering standards set at the level of electronic ballasts, whether a market shift from T–12 systems to T–8 systems is likely to occur, the extent of any such shift in terms of a percentage and whether any such shift should be considered in determining the impact of an energy conservation standard on consumers, manufacturers and the nation.
- In considering standards that would require T–12 cathode cutout ballasts, whether a market shift from cathode cutout ballasts to electronic ballasts is likely to occur, the extent of any such shift in terms of a percentage, the percentage of those consumers choosing electronic ballasts who would choose T–8 systems and whether any shift should be considered in determining the impact of an energy conservation standard on consumers, manufacturers and the nation.

Issued in Washington, D.C., on October 26, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–29156 Filed 10–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25611]

RIN 2120–AC84

Retrofit of Improved Seats in Air Carrier Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting, reopening of comment period.

SUMMARY: This document announces a public meeting in which the Federal Aviation Administration (FAA) will discuss changes in and solicit comments and information from the public on the FAA's current draft rule to require the retrofit of improved seats in air carrier transport category airplanes. A Notice of Proposed Rulemaking (NPRM) that proposed requiring more crashworthy seats on most air carrier airplanes operating under parts 121 and 135 was published on May 17, 1988. The draft

rule currently under consideration differs in some respects from the 1988 proposal. This document describes those differences and announces a 2-day public meeting at which the difference may be addressed and more current information and views obtained. This document also reopens the comment period.

DATES: The public meeting will be held on December 8 and 9, 1998, at 9:00 a.m., in Arlington, Virginia. Registration will begin at 8:30 a.m. on each day. Comments must be received no later than January 8, 1999.

ADDRESSES: The public meeting will be held at the Marriott Crystal Forum, 1999 Jefferson Davis Highway, Arlington, Virginia 22203–3564; telephone (703) 413–5500, facsimile (703) 413–0185.

Persons who are unable to attend the meeting and wish to submit written comments may mail their comments (clearly marked with the docket number) in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 25611, 800 Independence Avenue SW., Washington, DC 20591, or deliver in person to room 915G at the same address. Comments also may be submitted electronically to the following Internet address: 9–npr–cmts@faa.dot.gov. Comments may be inspected in room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. Written comments to the docket will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meeting and questions regarding the logistics of the meeting should be directed to Ms. Terry Stubblefield, Aircraft and Airport Rules Division, ARM–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7624, facsimile (202) 267–5075. Technical questions should be directed to Mr. John Petrakis, Aircraft Engineering Division, AIR–120, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 220591; telephone (202) 267–9274, facsimile (202) 267–5340. Cost/Benefit questions should be directed to Ms. Marilyn Don Carlos, Aircraft Regulatory Analysis Branch, APO–320, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3319, facsimile (202) 267–3324.

SUPPLEMENTARY INFORMATION: The public meeting will be held at the Marriott Crystal Forum, 1999 Jefferson Davis Highway, Arlington, Virginia 22202–3564; telephone (703) 413–5500, facsimile (703) 413–0185. Hotel reservations should be made in advance. A block of rooms has been reserved at the following two hotels:

- Hyatt Regency Crystal City at Washington National Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202; telephone (703) 418–1234, facsimile (703) 418–1289.
- Hilton Crystal City at National Airport, 2399, Jefferson Davis Highway, Arlington, Virginia 22202; telephone (703) 418–6800, facsimile (703) 418–3763.

Persons wishing to attend the public meeting are encouraged to make reservations at the Hyatt Regency Crystal City by November f16, 1998, or at the Hilton Crystal City by November 7, 1998, to take advantage of the special room rates. When making reservations, persons should contact the hotel directly using the telephone or facsimile numbers listed above and should indicate that they will be attending the Federal Aviation Administration public meeting.

The purpose of the meeting is for the FAA to (1) discuss with the public the draft final rule that is currently under consideration, which differs from the original proposal, (2) fully discuss the technical and cost-related issues of compliance with the retrofit of improved seats on air carrier transport category airplanes, and (3) hear comments from the public on these issues. The agenda for the meeting will include:

Day One

- Review Technical Standard Order (TSO)–C127a changes.
- Review of latest Head Injury Criteria (HIC) research and component tester development.
- Review the NPRM (Notice No. 88–8) and text of the draft final rule currently under consideration.
- Discuss ''16g-compatible seat'' testing for passenger and flight attendant seats.
- Review in detail the cost/benefit analysis.
- Public presentations.

Day Two

- Public presentations.
- Responses to questions and open discussion of identified issues.

Participation at the Public Meeting

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than December 1, 1998. Such requests should be submitted to Ms. Terry Stubblefield, Aircraft and Airport Rules Division, as listed in the section above titled **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers and presenters and make the agenda available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Background

Title III, section 303(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223, December 30, 1987) mandates rulemaking to consider requiring improved crashworthiness standards for aircraft seats. The act states the following:

> Not later than 120 days after the date of the enactment of this Act, the Secretary [of Transportation] shall initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness.

On May 17, 1988, the FAA published crashworthiness standards for seats used in newly certified transport category airplanes (53 FR 17640). On the same date, the FAA published an NPRM (Notice No. 88–8, 53 FR 17650) to require the retrofit of crashworthy seats on most existing transport category airplanes used in operations under 14 CFR parts 121 and 135. The NPRM proposed to prohibit the operation of these airplanes unless all passenger and flight attendant seats met the crashworthiness standards for newly certified airplanes adopted concurrently by the agency in 14 CFR part 25, as noted above.

Approximately 70 commenters responded to Notice No. 88–8. Forty-five commenters agreed with the proposal, 14 opposed it, and 11 supported the intent of the proposal but did not agree with all the provisions. Comments received in response to Notice No. 88–8, subsequent submittals, and information obtained during other public meetings are being considered in developing the proposed final rule.

Proposed Revisions Under Consideration

Based on comments to Notice No. 88–8, and other available information, the FAA is considering revisions to the proposed rule. The proposal currently under consideration is described as follows:

Section 121.311, Seats, safety belts, and shoulder harnesses, contains the current requirements. The FAA is considering adopting a new paragraph (j) that would prohibit the operation of each transport category airplane type certificated after January 1, 1958, unless all passenger and flight attendant seats in the airplane fully comply with the provisions of 14 CFR 025.562, in effect on June 16, 1988. The FAA is considering an exception for airplanes operated in all-cargo operations. The prohibition would be effective 4 years after the date of publication of the final rule.

The FAA is also considering an alternative to paragraph (j), which would be contained in a new paragraph (k). The alternative would allow a transport category airplane type certified after January 1, 1958, to continue to be operated after 4 years after the final rule is published, provided that all passenger and flight attendant seats comply with 14 CFR 25.562, or a properly marked as ''16g-compatible.'' Any combination of seats that comply with 14 CFR 25.562, or are properly marked also would be acceptable. A seat could be properly marked as ''16g-compatible'' if it is manufactured before the 4 year date, and the Administrator has determined the seat type to be capable of carrying the resultant dynamic loads required in § 25.562 (a) and (b), without structural separation of primary, i.e., seat legs, frame, or seat track attachments. The concept of ''16g compatible'' is further described below.

The Administrator's determination that a seat type is ''16g-compatible'' would be required to be made before 3 years after publication of the final rule. The Administration could make the determination on a later date if it is also determined that special circumstances make compliance by the 3 year date impracticable and that the public interest warrants a later date. A request for such an extension would be made to the Manager of the Transport Airplane Directorate, Aircraft Certification Service; in responding to that request, the Directorate would consider, among other things, the specific seats/seat types for which timely compliance would not be achieved, the reasons why compliance could not be achieved earlier, and the proposed schedule for compliance.

Analysis of Proposed Revisions Under Consideration

The FAA is describing the revisions currently under consideration to allow for public review prior to the public meeting. If the rule is adopted with the changes described above, seats that would be approved as ''16g-compatible'' would be required to undergo a supplemental certification. The supplemental seat certification process that will be administered by the FAA would be as follows.

Aircraft seats/seat types designed and manufactured to the requirements of TS0–C39, i.e., ''9g seats'' or the equivalent that an operator or seat manufacturer (applicant) considers to be ''16g-compatible seats,'' would be required to be approved by the FAA. To qualify a ''16g-compatible seat,'' the applicant would be required to show that the seat or seat type will withstand the forces addressed in 14 CFR § 25.562(a) and (b) without structural separation of the seat's primary structure. In addition, the applicant would have to show that the occupant dummy remains in the seat during the test and would not be ''entrapped'' by the test article.

The responsibility for demonstrating compliance would rest with the operator. The responsibility for obtaining supplemental seat certification approval for ''16g-compatible seats'' would rest with either the air carrier operator or the aircraft seat manufacturer. The applicant would have to provide the FAA with sufficient seat dynamic test data to support a compliance finding. At a minimum, the data package would include the dynamic test results for a 16g forward test with floor warpage (for passenger seats only) and a 16g vertical test. The data would include a complete description of the test article (for example, configuration, weight, and restraints); other types of testing information (including test set up, type of anthropomorphic dummy, and detailed description of seat attachment to include type of floor track (representative floor track not required) or wall mounting, and seat floor or wall attach fittings (for passenger seats only)); facility used and observers present; deformation measurements, if available; and any post-test observations, photos, and video documentation.

A seat shown to be a variation of an approved ''16g-compatible seat'' could be approved by similarity analysis. These related seats could be shown to be similar to a dynamic test article and/or the differences statistically analyzed to substantiate similarity. Modest seat weight increases not to exceed 6 percent would be allowed.

Applicants would submit their requests and substantiating test data package to their local Aircraft Certification Office for evaluation. Subsequent evaluation, if necessary, would be performed by a ''Seat Evaluation Review Team'' consisting of a core of two or three engineers from the FAA's Aircraft Certification Service and the Civil Aeromedical Institute (CAMI), who would be responsible for the final technical evaluation and approval, to ensure standardization of evaluation.

Written supplemental seat approvals for seats meeting the requirements, when granted, would be issued by the Director, Aircraft Certification Service to the applicant, which could be either the aircraft seat manufacturer or the operator. Each applicant in possession of written approval would be required to provide the proper identification of its seats by ensuring that each seat permanently and legibly is labeled as follows: ''16g Compatible per § 121.311'' and date of application of the label. The label would be required to be conspicuously located next to the existing seat label.

The FAA will make available, upon request, information stating the makes and models of approved ''16g-compatible seat'' types. However, affected air carriers and commercial operators ultimately would be responsible for obtaining the necessary data and approval. The FAA anticipates that seat manufacturers and associations such as the Air Transport Association (ATA), National Air Transportation Association (NATA), Regional Airline Association (RAA), and others, who have worked with the FAA in the past to improve occupant safety, would share data and information with each other. The air carrier, commercial operator, or airplane manufacturer may get a seat manufacturer to share some of the burden of obtaining FAA approval of some aspects of seating system design. In any event, it is each operator's responsibility to obtain supplemental seat certification for continued operation of airplanes.

Cost/Benefit Information

Costs

The total cost of the 16g seat retrofit draft final rule will be $950.5 million ($518.7 million discounted at 7 percent) over the 20-year period from 1999 through 2018. In the development of

this analysis the following assumptions were made:

1. On average, an airplane's service life is expected to be 42 years and its passenger seats are replaced at 14-year intervals.

2. Airplane passenger seats installed or replaced since 1992 are 16g compatible.

3. Flight attendant seats are not replaced.

4. The incremental cost of a 16g compatible passenger seat is $78. Installation costs are $65 per seat.

5. The average cost of a 16g flight attendant seat is $5,400. Installation costs are $85 per seat.

6. With a compliance date proposed at 4 years after the effective date of the rule, estimated to be January 1999, the costs of the rule include costs for the early replacement of some seats.

7. Downtime costs for airplanes whose seats will be replaced on an accelerated schedule (i.e., normal replacement would not occur before the compliance date) are $9,124 for the half-day estimated for installation.

8. A weight penalty of 1.5 pounds per passenger seat place and between 0 and 3 pounds per flight attendant seat was used.

9. The annual cost of carrying the additional weight of a passenger seat is $14.02, while the annual cost of the additional weight of a flight attendant seat is $8.42 (weighted average).

10. Although the FAA believes air carriers will replace ''16g-compatible seats'' with ''16g-compatible seats,'' the FAA has included the incremental costs of the ''16g passenger seats'' and their weight penalties from the date of replacement after the effective date of the rule.

11. An average of six passenger seats per airplane will need to have additional protection to comply with front-row HIC. The cost of this protection, which could be in the form of a special seat belt, is estimated to be $50 per seat.

12. Air carriers will not need to remove a row of seats, avoiding lost revenue.

13. No structural modifications to the airframe of affected airplanes will be necessary as a result of the rule.

The total estimated cost for seats, installation, weight penalties, and downtime for certain airplanes is $637.8 million. Certification costs during the period will be $312.7 million ($156.8 million discounted). The cost to show 16g compatibility is estimated to be $100,000 per certification. The cost to show full 16g requirements is $200,000 per certification. The cost per certification to show 16g requirements for a similar configuration is $40,000.

Benefits

The benefits of the 16g seat retrofit rule are estimated to range from $680 million to $1.2 billion ($290 to $530 million, discounted) over a 20-year period.

These benefits are based on the number of fatalities and injuries that would be avoided given accident rates that had survivors. Approximately 210 to 410 fatalities and 220 to 240 serious injuries would be avoided over a 20-year period.

The range of benefits stems from the uncertainty in determining whether a given fatality would have been prevented with a 16g seat (researchers' confidence in the specific cause of fatalities varied across accidents, seat location, etc.).

Information Requested

Based on the length of time since the close of the comment period, the FAA has determined that it is in the public interest to reopen the comment period on this NPRM to seek additional data and supporting methodology in the following areas:

1. How many applications for seat certifications (basic vs. modification) should the FAA expect per year for each seat class—flight attendant, tourist, business, and first class for both 16g and ''16g-compatible''?

2. What will it cost to certificate a ''16g-compatible seat'' vs. a full 16g seat?

3. What is the structural weight increase/decrease between a 16g and a 9g seat, by class?

4. What percentage of seats produced since 1992 are ''16g-compatible?''

5. Are the assumptions valid that passenger seats are replaced, on average, every 14 years, and that flight attendant seats are rarely replaced?

6. What is the average retirement age for an airplane when it leaves part 121 or part 135 service?

7. What are various means of complying with front-row HIC? How much do they cost? Are there disadvantages to installing a y-belt? What about removable bulkheads, airbags, or shoulder harnesses? What is the incremental cost of a y-belt, a shoulder harness, and an airbag?

8. The FAA received comments stating that removing a row of seats is the only way to comply with HIC. What is the foundation for that comment? Is the answer different depending on whether the airplane is a wide or narrow body?

9. The FAA received comments that estimated the cost associated with loss of one seat per flight per day. Did that comment take into consideration the fact that, because most people book seats in advance, these passengers could rebook seats on nonfilled flights?

10. How long would it take to remove old seats and install 16g or ''16g-compatible seats'' in an airplane? When would new seat installations most likely be done? Would they be done in service or during C checks or D checks?

Accordingly, the FAA will conduct a 2-day public meeting in Arlington, Virginia, for the purpose of gathering this additional information.

The comment period on the proposed rule will remain open until January 8, 1999, 30 days after the close of the public meeting. The FAA will use this public meeting as a forum to discuss previously submitted comments, hear new comments, and accept additional data and support methodologies from the public.

Persons interested in obtaining a copy of Notice No. 88–8 should contact Ms. Terry Stubblefield, Aircraft and Airport Rules Division, at the address, telephone number, or facsimile number provided in the section above titled **FOR FURTHER INFORMATION CONTACT.**

An electronic copy of the Notice of Public Meeting and Notice No. 88–8 may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the GPO's web page at http://www.access.gpo.gov/su__docs to access recently published rulemaking documents.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures established for this meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.), subject to availability of space in the meeting room.

2. Representatives from the FAA will conduct the public meeting. A panel of FAA experts will be present to discuss information presented by participants.

3. The public meeting is intended as a forum to seek additional data and to obtain clarification of supporting

methodologies from the industry. Participants must limit their presentations and submissions of data to this issue.

4. The meeting will offer the opportunity for all interested parties to present additional information not currently available to the FAA, and will provide an opportunity for the FAA to explain the methodology and technical assumptions supporting its current conclusions.

5. FAA experts and public participants are expected to engage in a full discussion of all technical material presented at the meetings. Each person presenting conclusions will be expected to submit to the FAA data fully supporting those conclusions; all proprietary data submitted will be protected by the FAA from disclosure in accordance with applicable laws.

6. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group. If necessary, the meeting may be extended to evenings or additional days. If practicable, the meeting may be accelerated to enable adjournment in less than the time scheduled.

7. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

8. The meeting will be recorded by a court reporter. A transcript of the meeting and all material accepted by the panel during the meeting will be included in the public docket, unless protected from disclosure. Each person interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

9. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the draft final rule may be accepted at the discretion of the presiding officer and will be subsequently placed in the public docket. The FAA requests that presenters at the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the presenter.

10. Statements made by members of the panel are intended to facilitate discussion of the issues or to clarify issues. Comments made at these public meetings will be considered by the FAA before making a final decision on issuance of the final rule.

11. The meeting is designed to solicit public views and more complete information relevant to the final rule under consideration. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on October 23, 1998.

Douglas Kirkpatrick,

Acting Director, Aircraft Certification Service.

[FR Doc. 98–29050 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520 and 2560

RIN 1210–AA69
RIN 1210–AA61

Summary Plan Descriptions; Claims Procedures; Notice of Extension of Comment Period

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of extension of comment periods.

SUMMARY: This document extends the comment period regarding the proposed regulations under section 102(b) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) (relating to the content of the Summary Plan Description required to be furnished to employee benefit plan participants and beneficiaries covered under ERISA) and under section 503 of ERISA (relating to claims procedures of employee benefit plans covered under ERISA). The proposed regulations were set forth in separate notices of proposed rulemaking published in the **Federal Register** on September 9, 1998.

DATES: The comment periods are extended through December 9, 1998.

ADDRESSES: Written comments should be submitted with a signed original and three copies to the Office of Regulations and interpretations, Pension and Welfare Benefits Administration, 200 Constitution Avenue N.W., Room N–5669, U.S. Department of Labor, Washington, DC 20210, and marked ATTENTION: Proposed SPD Content Regulations or Benefit Claims Regulation, whichever is appropriate. All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5507, 200 Constitution Avenue NW, Washington, DC 20210 from 8:30 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On September 9, 1998, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** (63 FR 48376) containing proposed amendments to the regulations governing the content of the Summary Plan Description (SPD) required to be furnished to employee benefit plan participants and beneficiaries covered under Title I of the Employee Retirement Income Security Act (ERISA). On that same date, the Department also published a notice of proposed rulemaking revising the minimum requirements for benefit claims procedures of employee benefit plans covered by ERISA (63 FR 48390). In those notices, the Department invited all interested persons to submit written comments concerning the proposed regulations on or before November 9, 1998.

The Department has received requests from some members of the public for additional time to prepare comments on the proposed claims procedure regulation due to the complexity of the issues involved in that proposed regulation, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice extends the comment period during which comments on the proposed claims procedure regulation will received through December 9, 1998. Moreover, although no requests for extensions have been received regarding the proposed SPD content regulation, this notice also extends through December 9, 1998, the comment period for that rulemaking in order to ensure that persons interested in both proposed regulations, which are related in content, will have sufficient time to prepare comments.

Notice of Extension of Public Comment Periods

Notice is hereby given that the period of time for the submission of public comments on the proposed regulation relating to the content of the SPD required to be furnished to employee benefit plan participants and beneficiaries covered under ERISA (proposed at 63 FR 48376) and the proposed regulation relating to the claims procedures of employee benefit plans covered under ERISA (proposed at 63 FR 48390), is hereby extended through December 9, 1998.

Signed at Washington, DC, this 27th day of October, 1998.

Meredith Miller,

Deputy Assistant Secretary For Policy, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–29173 Filed 10–29–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ44

Well Grounded Claims/Duty to Assist

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) to establish policy and guidance regarding what action, if any, VA should take to develop evidence pertaining to benefit claims that are not well grounded.

DATES: Written comments in response to this ANPRM must be received on or before January 28, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN: 2900–AJ44.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 5107(a) of title 38, United States Code, states that, unless otherwise provided by the Secretary, it is the responsibility of any person who submits a claim for benefits under a law administered by VA to submit evidence to justify a belief by a fair and impartial individual that the claim is well grounded.

The U.S. Court of Veterans Appeals (the Court) has defined a well-grounded claim as a plausible claim, one which is meritorious on its own or capable of substantiation. To satisfy the initial burden of 38 U.S.C. 5107(a), a claim need not be conclusive but only possible. The Court has further held that such a claim must be accompanied by supportive evidence and that such evidence must justify a belief by a fair and impartial individual that the claim is plausible. For example, generally for a claim for service-connected disability benefits to be well grounded there must be: (1) a medical diagnosis of a current disability; (2) medical evidence, or in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between an in-service disease or injury and the current disability.

After establishing the requirement that a claimant must submit a well-grounded claim, 38 U.S.C. 5107(a) requires the Secretary of Veterans Affairs to assist ''such a claimant'' in developing the facts pertinent to the claim. Both the Court and the U.S. Court of Appeals for the Federal Circuit have held that VA's statutory duty to assist attaches only after a claimant submits a well grounded claim.

In a substantial number of cases, both the Board of Veterans Appeals and the Court have found that claims developed and adjudicated at VA's regional offices were not well grounded.

This situation has raised concerns from a number of quarters. For example, some members of the Court have suggested that 38 U.S.C. 5107(a) reflects a statutory policy that implausible claims should not consume the limited resources of VA and force into backlog and delay well-grounded claims. The Veterans' Claims Adjudication Commission, established under Pub. L. 103–446, questioned whether it is prudent to invest the cost in time and resources of developing claims that are not well grounded. They maintained, among other things, that developing claims that are not well grounded (1) improperly lifts the burden of proof from the claimant and places it on VA; and (2) tends to unnecessarily expand issues and drive the adjudication system toward requesting and obtaining irrelevant evidence rather than concentrating resources on obtaining evidence focused on the issues.

Moreover, VA recognizes the need for clear claims-development guidelines that can be consistently applied. The Court has noted that if the Secretary, as a matter of policy, volunteers assistance to establish well groundedness, grave questions of due process can arise if there is apparent disparate treatment between claimants in this regard.

By this ANPRM, VA invites input as to what policies and procedures it should adopt to govern the development of claims which are not well grounded.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: September 24, 1998.

Togo D. West, Jr.,

Secretary.

[FR Doc. 98–29137 Filed 10–29–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 63

RIN 0925–AA11

Traineeships

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend its regulations governing traineeships to reflect additional conditions under which NIH may terminate traineeship awards and to reflect changes in the authorities for the awards.

DATES: Comments on the proposed changes must be received on or before December 29, 1998 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20852. Comments may also be sent electronically by facsimile (301) 496–0169 or e-mail (jm40z@nih.gov).

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, at the address above, or telephone (301) 496–4607 (not a toll-free number). For information about traineeship awards contact James Alexander, Acting Director, Office of Education, Office of Intramural Research, National Institutes of Health, Building 10, Room 1C–129, 10 Center Dr MSC 1158, Bethesda, MD 20892–1158, telephone (301) 496–2427 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 405(b)(1)(C) of the Public Health Service (PHS) Act, as amended, authorizes the Secretary, acting through the directors of the national research institutes of NIH, to conduct and support research training for which fellowship support is

not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. Additionally, section 404E(d)(2) of the PHS Act authorizes the Director of the Office of Alternative Medicine to support research training for which fellowship support is not provided under section 487 of the PHS Act, and that is not residency training of physicians or other health professionals; and section 472 of the PHS Act authorizes the award of traineeships in medical library science and related fields. Under these authorities, NIH awards research traineeships to qualified individuals. These traineeships are governed by the regulations codified at 42 CFR Part 63. The regulations were revised in their entirety, February 27, 1995 (60 FR 10718). NIH proposes to amend § 63.9 by revising paragraph (b) to identify scientific misconduct as a basis for termination, and adding new paragraphs (c) and (d) which add conviction of a felony and certain other criminal offenses, and programmatic changes or lack of funds, respectively, as additional grounds for termination.

Additionally, NIH proposes to amend the authority citation by removing the United States Code citation, 42 U.S.C. 287c(b), section 485B(b) of the PHS Act, to reflect the renaming of the National Center for Human Genome Research (NCHGR) as the National Human Genome Research Institute (NHGRI), effective January 27, 1997 (62 FR 3900). As a result of the establishment of this new research institute, the current reference to section 485B is redundant and unnecessary. The reference to section 405(b)(1)(C) of the PHS Act (42 U.S.C. 284(b)(1)(C)) is sufficient, because it provides research training authority for all research institutes. The current references to the National Center for Human Genome Research and section 485B of the PHS Act in § 63.1 and § 63.2 are also redundant and unnecessary as a result of the renaming. Consequently, NIH proposes to remove references to the National Center for Human Genome Research and section 485B of the PHS Act in paragraph (a) of § 63.1 and in the definitions set forth in § 63.2 for the terms ''award,'' ''awardee,'' ''director,'' and ''traineeship.'' Also the definition of ''misconduct in science,'' as prescribed in the PHS regulations governing the responsibility of awardees and applicants for dealing with misconduct in science, 42 CFR part 50, subpart A, is added to § 63.2.

Finally, NIH proposes to revise the references set forth in subparagraphs 8, 9, and 10 of § 63.10 to comply with **Federal Register** format requirements. The purpose of this Notice of Proposed Rulemaking (NPRM) is to invite public comment with regard to the proposed changes. The following statements are provided as public information.

Executive Order 12866

This NPRM was reviewed by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) as required under Executive Order 12866, Regulatory Planning and Review, and was deemed to be not significant, as defined under the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. The Director certifies that the proposed changes to the traineeship regulations will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This NPRM does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by this NPRM is: 93.140 Intramural Research Training Award

List of subjects in 42 CFR Part 63

Grant programs-health, Health, Medical research.

Dated: August 14, 1998.

Harold Varmus,

Director, National Institutes of Health.

Accordingly, it is proposed to amend part 63 of title 42 of the Code of Federal Regulations to read as set forth below.

PART 63—TRAINEESHIPS

1. The authority citation would be revised to read as set forth below:

Authority: 42 U.S.C. 216, 283g(d)(2), 284(b)(1)(C), 286b–3.

2. Section 63.1 would be amended by revising paragraph (a) to read as follows:

§ 63.1 To what programs do these regulations apply?

(a) The regulations in this part apply to research traineeships awarded by each Director of a national research institute of NIH, the Director of the National Library of Medicine, and the Director of the Office of Alternative Medicine, or their designees, pursuant to sections 405(b)(1)(C), 472, and 404E(d)(2) of the Act, respectively.

* * * * *

3. Section 63.2 would be amended by revising the definitions of ''award,'' ''awardee,'' ''director,'' and ''traineeship,'' and adding a new definition of ''misconduct in science,'' to read as follows:

§ 63.2 Definitions.

* * * * *

Award means an award of funds under section 404E(d)(2), 405(b)(1)(C), 472, or other sections of the Act, which authorize research training or traineeships.

Awardee means an individual awarded a traineeship under section 404E(d)(2), 405(b)(1)(C), 472, or other sections of the Act, which authorize research training or traineeships

Director means the director of one of the national research institutes of NIH, the Director of the National Library of Medicine, and the Director of the Office of Alternative Medicine, or any official of NIH to whom the authority involved has been delegated.

* * * * *

Misconduct in science shall have the same meaning as prescribed in § 50.102 of this chapter.

* * * * *

Traineeship means an award of funds under section 404E(d)(2), 405(b)(1)(C), 472, of the Act, or other sections of the Act authorizing research training or traineeships, and the regulations of this part, to a qualified individual for the person's subsistence and other expenses during a period in which the awardee is acquiring the research training approved under the award.

4. Section 63.9 would be amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 63.9 How may NIH terminate awards?

* * * * *

(b) If it is determined that the awardee has committed misconduct in science, is ineligible, has materially failed to comply with the terms and conditions of the award, or to carry out the purpose for which the award was made; or

(c) If the awardee is convicted of a felony, or an offense involving any illegal drug or substance, or any offense involving a lack of financial integrity or business honesty; or

(d) Because of programmatic changes or lack of funds.

5. Section 63.10 would be amended by revising and rearranging unnumbered subparagraphs 8, 9, and 10 to read as follows:

§ 63.101 Other HHS regulations and policies that apply.

* * * * *

59 FR 14508 (March 28, 1994—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research.

Note. this policy is subject to change, and interested persons should contact the Office of Research on Women's Health, NIH, Room 201, Building 1, MSC 0161, Bethesda, MD 20892–0161, telephone (301) 402–1770 (not a toll-free number) to obtain reference to the current version and any amendments.

59 FR 34496 (July 5, 1998)—NIH Guidelines for Research Involving Recombinant DNA Molecules.

Note. this policy is subject to change, and interested persons should contact the Office of Recombinant DNA Activities, NIH, Suite 323, 6000 Executive Boulevard, MSC 7010, Bethesda, MD 20892–7010, telephone (301) 496–9838 (not a toll-free number) to obtain references to the current version and any amendments.

''Public Health Service Policy on Human Care and Use of Laboratory Animals,'' Office for Protection from Research Risks, NIH (Revised September 1986).

Note. this policy is subject to change, and interested persons should contact the Office for Protection from Research Risks, NIH, Suite 3B01, 6100 Executive Boulevard, MSC 7507, Rockville, MD 20852–7507, telephone (301) 496–7005 (not a toll-free number) to obtain references to the current version and any amendments.

[FR Doc. 98–28712 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7262]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Washington County and Incorporated Areas.	Scull Creek	Approximately 250 feet upstream of confluence with Mud Creek.	*1,183	*1,179
			Approximately 1,650 feet upstream of Sycamore Street.	*1,290	*1,294
			Approximately 650 feet upstream of College Avenue.	*1,400	*1,399
		Clabber Creek Tributary C–2.	At confluence with Clabber Creek	None	*1,161
			Approximately 2,200 feet upstream of confluence with Clabber Creek.	None	*1,201
		Hamestring Creek Tributary HS2.	Approximately 200 feet upstream of confluence with Hamestring Creek.	None	*1,192
			Approximately 3,200 feet upstream of confluence with Hamestring Creek.	None	*1,237
		Clabber Creek Tributary C–1.	Approximately 200 feet upstream of confluence with Clabber Creek.	None	*1,160
			Approximately 1,200 feet upstream of confluence with Tributary C1–A.	None	*1,203
		Clabber Creek Tributary C1–A.	Approximately 100 feet upstream of confluence of Clabber Creek Tributary C1.	None	*1,173
			Approximately 540 feet upstream of County Road 707.	None	*1,203
		Middle Fork Hamestring Creek.	Approximately 200 feet upstream of confluence with Hamestring Creek.	None	*1,220
			Approximately 100 feet upstream of Porter House Road.	None	*1,247
		North Fork Hamestring Creek.	Approximately 20 feet upstream of confluence with Hamestring Creek.	None	*1,209
			Approximately 500 feet upstream of Highway 71.	None	*1,256
		Clabber Creek	Approximately 20 feet upstream of confluence with Hamestring Creek.	*1,141	*1,144
			Approximately 1,250 feet downstream of Thuckers Drive.	None	*1,197
			Approximately 100 feet upstream of Highway 71.	None	*1,223
		South Fork Hamestring Creek.	Just above confluence with Hamestring Creek.	*1,235	*1,237
			Approximately 2,300 feet upstream of Route 71.	None	*1,273
		Town Branch	Approximately 1,250 feet downstream of Armstrong Avenue.	*1,192	*1,189
			Approximately 2,00 feet upstream of Highway 71.	None	*1,273
		Owl Creek Tributary 2	At confluence with Owl Creek	None	*1,230
			Approximately 3,000 feet upstream of confluence with Owl Creek.	None	*1,252
		Owl Creek Tributary 1	At confluence with Owl Creek	None	*1,227
			Approximately 3,100 feet upstream of confluence with Owl Creek.	None	*1,242
		Hamestring Creek	Approximately 200 feet downstream of County Road 881.	None	*1,118
			Approximately 1,500 feet upstream of Wedington Drive.	*1,255	*1,250
		Scull Creek Tributary 2	At confluence with Scull Creek	None	*1,214
			Approximately 1,000 feet upstream of confluence with Scull Creek.	None	*1,225
		Sublet Creek	At confluence with Scull Creek	*1,238	*1,232
			Approximately 1,750 feet upstream of Sycamore Street.	None	*1,383
		Scull Creek Tributary 1	At confluence with Scull Creek	None	*1,195
			Approximately 1,200 feet upstream of Futrail Drive.	None	*1,228
		Hamestring Creek Tributary HS3.	At confluence with Hamestring Creek	None	*1,236
			Approximately 125 feet upstream of Mount Comfort Road.	None	*1,260
		Hamestring Creek Tributary HS1.	Approximately 600 feet downstream of County Road 882.	None	*1,126

State	City/town/county	Source of flooding	Location	Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 220 feet upstream of Double Tree Drive.	None	*1,223
		Cato Springs Branch	At confluence with Town Branch	*1,218	*1,221
			Approximately 2,500 feet upstream of Arkansas and Missouri Railroad.	None	*1,252
		Owl Creek	Approximately 700 feet downstream of Double Springs Road (County Road 27).	*1,176	*1,173
			Approximately 2,100 feet upstream of Rupple Road.	None	*1,247
		Mud Creek Tributary	At confluence with Mud Creek	*1,232	*1,226
			Approximately 1,500 feet upstream of Azalea Drive.	*1,320	*1,316
			Approximately 2,400 feet upstream of Sycamore Street.	*1,438	*1,443
Maps are available for inspection at the Washington County Planning Office, Four South College Avenue, Suite 205, Fayetteville, Arkansas.					
Send comments to The Honorable Charles A. Johnson, Washington County Judge, 280 North College Avenue, Fayetteville, Arkansas 72701.					
Maps are available for inspection at 113 West Mountain, Fayetteville, Arkansas.					
Send comments to The Honorable Fred Hanna, Mayor, City of Fayetteville, 113 West Mountain, Fayetteville, Arkansas 72701.					
Maps are available for inspection at 2904 Main Drive, Johnson, Arkansas.					
Send comments to The Honorable Richard Long, Mayor, City of Johnson, P.O. Box 563, Johnson, Arkansas 72741.					
Louisiana	Hammond (City Tangipahoa Parish.	Ponchatoula Creek	Upstream of Illinois Central Gulf Railroad bridge.	*45	*45
			Approximately 4,00 feet upstream of Yellow Water Diversion Canal.	None	*46
Maps are available for inspection at the City of Hammond City Hall, 310 East Charles, Hammond, Louisiana.					
Send comments to The Honorable Russell DePaulo, Mayor, City of Hammond, 310 East Charles, Hammond, Louisiana					
	Ponchatoula (City) Tangipahoa Parish	Ponchatoula Creek	At U.S. Highway 51	None	*17
			Approximately 6,200 feet upstream of U.S. Highway 51 bridge.	None	*21
Maps are available for inspection at 125 West Hickory, Ponchatoula, Louisiana.					
Send comments to The Honorable Julian Dufreche, Mayor, City of Ponchatoula, 125 West Hickory, Ponchatoula, Louisiana 70454.					
	Tangipahoa Parish (Unincorporated Areas).	Ponchatoula Creek	Upstream of U.S. Highway 51 bridge	None	*17
			Upstream of New Genessee Road	None	*57
		Yellow Water River Canal	Downstream of U.S. Highway 190 bridge	*40	*38
			Approximately 1,600 feet upstream of Ward Line Road.	*47	*46
Maps are available for inspection at 48589 Highway 51, Tickfaw, Louisiana.					
Send comments to The Honorable Gordon Burgess, Tangipahoa Parish President, P.O. Box 215, Amite, Louisiana 70422.					
New Mexico	Portales (City Roosevelt County.	Globe Ditch	Approximately 585 feet downstream of confluence of 17th and 18th Streets shallow flooding.	None	+3,998
			At confluence of 17th and 18th Streets shallow flooding.	*3,995	+3,999
		17th and 18th Streets Shallow Flooding and Shallow Flooding Through University and Downtown Area.	At confluence with Globe Ditch	*3,995	+3,999
			At downstream side of Burlington Northern Railroad.	None	+4,009
Maps are available for inspection at the City of Portales, 100 West First, Portales, New Mexico.					
Send comments to The Honorable Don Davis, Mayor, City of Portales, 101 South Main Street, Portales, New Mexico 88130.					
Texas	Victoria (City) Victoria County.	Whispering Creek	Just upstream of John Stockbauer Drive	*108	*108
			Just downstream of Loop 463	*116	*114

State	City/town/county	Source of flooding	Location	Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 3,640 feet upstream of Loop 463.	*119	*118

Maps are available for inspection at the City of Victoria City Hall, 700 Main Center, Suite 115, Victoria, Texas.

Send comments to The Honorable Gary Middleton, Mayor, City of Victoria, P.O. Box 1758, Victoria, Texas 77902.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 26, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–29134 Filed 10–29–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0991–AA98

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a new 45 CFR part 61 to implement the statutory requirements of section 1128E of the Social Security Act, as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 221(a) of HIPAA specifically directed the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers, or practitioners, and maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on December 29, 1998.

ADDRESSES: Please mail or deliver your written comments to the following address: Health Resources and Services Administration, Bureau of Health Professions, Division of Quality Assurance, Room 8A–55, Attention: OIG–46–P, 5600 Fishers Lane, Rockville, Maryland 20857.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–46–P.

FOR FURTHER INFORMATION CONTACT: Thomas C. Croft, (301) 443–2300, Director, Division of Quality Assurance/BHPr/HRSA.

SUPPLEMENTARY INFORMATION:

I. Background

The National Practitioner Data Bank

The National Practitioner Data Bank (NPDB) was established under the Health Care Quality Improvement Act (HCQIA) of 1986, as amended (42 U.S.C. 11101). The NPDB contains adverse licensure action reports on physician and dentists (including revocations, suspensions, reprimands, censures, probations and surrenders for quality purposes); adverse clinical privilege actions against physicians and dentists; adverse professional society membership actions against physicians and dentists; and medical malpractice payments made on all health care practitioners. Groups that have access to this data system include hospitals, other health care entities that conduct peer review and provide or arrange for care, State Boards of Medical or Dental examiners and other health care practitioner State boards. Individual practitioners are able to self-query. The reporting of information under the NPDB is limited to medical malpractice payers, State licensing medical boards and dental examiners, professional societies with formal peer review and hospitals and health care entities.

Establishment of the Healthcare Integrity and Protection Data Bank

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, requires the Secretary, acting through the Office of Inspector General (OIG) and the United States Attorney General, to establish a new health care fraud and abuse control program to combat health care fraud and abuse (see section 1128C of the Act, as enacted by section 201(a) of HIPAA). Among the major steps in this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners (see section 1128C(a)(1)(E) of the Act). The data bank is specifically provided for by section 1128E of the Act (added by section 221(a) of HIPAA), which directs the Secretary to maintain a data base of such final adverse actions. Final adverse actions include: (1) civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulations. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. However, any final adverse action that emanates from such settlements and consent judgments, and that would otherwise be reportable under the statute, is to be reported to the data bank. Final adverse actions are to be reported, regardless of whether such actions are being appealed by the subject of the report (see section 1128E(b)(2)(C) of the Act). Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. Reporting is limited to the same groups that have access to the information.

The range of reportable final adverse actions specified in the statute clearly indicates that Congress intended a broad interpretation of the terms ''health care fraud and abuse.'' For purposes of the statute, we believe all reportable final adverse actions include actions related to provider, supplier and practitioner practices that are inconsistent with

accepted sound fiscal, business or medical practices, directly or indirectly, resulting in: (1) unnecessary costs to the program; (2) improper payment; (3) services that fail to meet professionally recognized standards of care or that are medically unnecessary; or (4) adverse patient outcomes, failure to provide covered or needed care in violation of contractual arrangements, or delays in diagnosis or treatment. The statute also requires the Secretary to implement the national health care fraud and abuse data collection program in such a manner as to avoid duplication with the reporting requirements established for the NPDB. This proposed rulemaking is intended to establish such a fraud and abuse data bank, to be known as the Healthcare Integrity and Protection Data Bank (HIPDB).

Coordination and Distinctions Between the HIPDB and the NPDB

With regard to the importation of State licensing board actions reported to the NPDB prior to the enactment of HIPAA, we intend to include in the HIPDB only such NPDB information about licensing actions which were effective on or after August 21, 1996. In accordance with the statute, the reporter responsible for reporting adverse actions to the HIPDB and the NPDB will only be asked to submit the report one time. The system is being designed to sort the appropriate actions into the HIPDB, NPDB, or both. The system is being configured to account for the statutory differences in the type of actions and groups eligible to query the two data banks.

The NPDB does not collect information on Federal criminal convictions and medicare and Medicaid exclusions, except to the extent that they lead to State licensing board, medical malpractice payment or privilege restriction actions. Further, while civil judgments included in the NPDB would be those that resulted in malpractice payments, the HIPDB explicitly does not include medical malpractice civil judgments. As a result, these items will not be part of the NPDB data to be imported into the HIPDB.

Data Elements To Be Reported to the HIPDB

Section 1128E(b)(2) of the Act cites a number of required elements or types of data that must be reported to the HIPDB. These elements include: (1) the name of the individual or entity; (2) a taxpayer identification number; (3) the name of any affiliated or associated health care entity; (4) the nature of the final adverse action, and whether the action is on appeal; (5) a description of the acts or omissions, and injuries, upon which a final adverse action is based; and (6) any other additional information deemed appropriate by the Secretary.

With respect to this last element, we are exercising this discretion and are proposing to add additional reportable data elements. The additional elements reflect much of the information that is already routinely collected by the Federal and State reporting agencies. Therefore, in adding these elements, the Secretary believes this does not impose any additional burden on State government agencies and health plans. Furthermore, the Secretary is protecting health care providers, suppliers and practitioners from being erroneously identified without imposing additional gathering burdens on reporters of information. The addition of this information also will serve to: (1) recognize the multiple purposes to which eligible users will apply the data, such as licensing decisions by professional licensing boards, credentialing and contracting decisions by health plans, and investigation by law enforcement agencies, investigative units and health plan special investigative units of health care fraud perpetrators and schemes; (2) maximize the accuracy of a match between the names of queried practitioners, providers, or suppliers and existing reports in the HIPDB; (3) provide access to information about health care fraud and abuse activities nationwide by promoting efficient coordination of investigative efforts among insurers and law enforcement agencies; (4) support the intent of the statute to address issues related to fraud and abuse, including quality of health care and patient safety; and (5) prevent the erroneous reporting and identifying of health care providers, suppliers and practitioners. Through this proposed rulemaking, we are specifically seeking the views of Federal and State officials and of health plans about whether the proposed information collection requirements will be necessary for the proper performance of the HIPDB system. In addition, we are soliciting comments as to whether the proposed data elements set forth in this rule will be useful in preventing fraud and abuse and in improving the quality of patient care.

Immunity Provisions Under the HIPDB

Immunity provisions in section 1128E(e) of the Act protect individuals and entities from being held liable in civil actions for reports made to the HIPDB unless they have knowledge of the falsity of the information contained in the report. The statute provides similar immunity to the Department in maintaining the HIPDB. We are interpreting the term ''knowledge of falsity'' to require actual knowledge of falsity by the submitting entity.

II. Provisions of the Proposed Rule

These proposed regulations would implement the requirements for reporting of specific data elements to, and procedures for obtaining information from, the HIPDB (and are applicable to Federal and State government agencies and health plans). Set forth below is a brief description of the major provisions of the proposed rule, including, among other things, proposed definitions for certain terms associated with the HIPDB, a discussion of the specific reporting requirements and when such information must be reported, the fees applicable to requests for information, the issues of the confidentiality of information, and how to dispute the accuracy of information in the HIPDB.

1. Definitions

These proposed regulations would expand on previous regulatory definitions and clarify aspects of definitions set forth in the statute. Congress intended that the HIPDB play a significant role in reducing public and private health care expenditures that result in health care fraud and abuse, by alerting system users to previous relevant adverse actions. Therefore, we believe that the reportable range of activities and the individuals and entities that engage in them should as broadly as possible capture the portion of expenditures lost each year to fraud and abuse. Towards this end, this proposed rule sets forth definitions for certain terms that may appear more expansive than some previous regulatory definitions. One such example would include the definitions of health care provider and supplier. While definitions of these terms existed in other Departmental regulations, we believe it is significant that Congress chose not to use those definitions. In fact, earlier versions of section 1128E of the Act contained some of these previous definitions, but deleted them from the final statute. The absence of these references strongly suggests that Congress intended that these terms be developed based on the breadth of health care expenditures in mind when applied to the HIPDB program. We believe these expanded definitions are fully consistent with congressional intent and accurately reflect the range of subjects and activities currently considered by government agencies and health plans in fraud and abuse prevention efforts. This proposed rule

also, in certain instances, clarifies existing statutory definitions. These clarifications merely provide additional examples of the scope of the definitions, but do not go beyond the range that Congress intended.

As a result, in § 61.3 of these regulations, we are proposing the inclusion of the following definition of terms—

A. Affiliated or Associated

The term ''affiliated or associated'' would include, but would not be limited to, health care entities such as organizations, associations, corporations, or partnerships that are affiliated or associated with a subject of a final adverse action. It also would include a professional corporation or other business entity composed of a single individual. For example, if the subject is an individual, the affiliated or associated health care entities would include, among other things, the subject's employer, businesses owned or managed by the subject, partnerships, memberships in health maintenance organizations or health care networks, or institutions granting the subject clinical privileges. If the subject is an entity, its affiliated or associated entities would include parent corporations, subsidiaries, and joint ventures, among other things. We believe that this definition supports congressional intent to enable authorized users who are conducting fraud and abuse investigations to identify other business affiliations through which the subject may have committed other acts of wrongdoing and to aid with subject identification. Inclusion of an entity in this category by a reporter would in no way imply that the entity was a party to the act(s) or omission(s) that led to a reportable final adverse action.

B. Government Agency

The definition of the term ''government agency'' is set forth in accordance with section 1128E(g)(3) of the Act, and would serve to set out the range of government agencies that are required to report to, and authorized to receive information from, the HIPDB. For purposes of these regulations, the term ''government agency'' would include, but would not be limited to: (1) the Department of Justice; (2) the Department of Health and Human Services; (3) any other Federal or State agency that either administers or provides payment for the delivery of health care services (including, but not limited to, the Department of Defense and the Department of Veterans Affairs); (4) State law enforcement agencies; (5) State Medicaid Fraud Control Units; and (6) other Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or licensed health care practitioners. Examples of such State agencies include Departments of Professional Regulation, Health, Social Services (including State Survey and Certification and Medicaid Single State agencies), Commerce, and Insurance.

We believe there are two key aspects each State may need to consider with respect to the data: who will report such information and how the information will be reported to the data bank. First, with respect to who is to report, we invite comments from States delineating specific agencies that are responsible for the licensing and certification of health care providers, suppliers and practitioners that will be subject to the section 1128E reporting requirements. In addition, we invite comments identifying the specific State law enforcement agencies that will be responsible for reporting to the HIPDB.

Second, we also recognize the States' prerogative in determining the manner in which they will report. For example, one option may be that States may elect to have one centralized point for reporting, or elect to have multiple agencies (including, at their option, municipalities, county agencies and local law enforcement agencies such as District and County attorneys) report independently to the HIPDB. Another option for reducing the reporting burden of State licensing and certification boards would be to have their respective professional organizations serve as their authorized agents for reporting to the HIPDB. It has been brought to our attention that similar data reports are being provided to the professional organizations. The ability to report the same information one time through a designated authorized agent would streamline State reporting. We believe this would be an acceptable option for meeting reporting obligations of State boards and is raised for consideration when meeting their reporting obligations to the HIPDB. We invite comments from each State regarding the manner in which it intends to report to the HIPDB.

C. Health Care Provider and Health Care Supplier

The statute does not define the terms ''health care provider'' and ''health care supplier'' for purposes of this data bank. Since there is considerable overlap in the roles of practitioners, providers and suppliers (e.g., a skilled nursing facility is an institutional provider, but also can be a supplier of health care items and equipment), we believe that these terms—as well as the term ''practitioner'' defined below—are not intended to describe distinct, mutually exclusive categories nor are the examples provided in this section intended to be exhaustive. We believe that these overlapping roles do not necessarily represent the categories in which subjects' information will be collected, maintained and disseminated in the HIPDB.

Accordingly, in keeping with congressional intent that the Department coordinate this program closely with the NPDB, we would define the term ''health care provider'' to mean (1) a provider of services as defined in section 1861(u) of the Act; (2) any health care entity (including a health maintenance organization (HMO), preferred provider organization, ambulatory care clinic and group medical practice) that provides health care services and follows a formal peer review process for the purpose of furthering quality health care; and (3) and any other health care entity that, directly or through contracts, provides health care services. That definition encompasses institutional providers such as hospitals, home health care agencies, skilled nursing facilities, and comprehensive outpatient rehabilitation facilities.

''Health care supplier'' would be defined as a provider of medical and other health care services, as described in section 1861(s) of the Act, and would include Medicare facilities and practitioners as well as medical equipment suppliers (including clinical laboratories, certain licensed or certified health care practitioners, and suppliers of durable medical equipment). In addition, to ensure that this definition captures other entities that may be the subject of health care fraud investigations by the State or Federal Government or health plans, this term would further include any individual or entity, other than a provider, who furnishes or provides access to health care services, supplies, items or ancillary services (including, but not limited to, durable medical equipment suppliers and manufacturers of health care related items; pharmaceutical suppliers and manufacturers; health record services, such as medical, dental and other patient records; health data suppliers; and billing and transportation service suppliers), and any individual or entity under contract to provide health care supplies, items or ancillary services, and any group, organization or company providing health benefits whether directly, or indirectly through insurance, reimbursements or otherwise. The term ''health care

supplier'' also would include, but would not be limited to, insurance producers, such as agents, brokers, solicitors, consultants and reinsurance intermediaries; insurance companies; self-insured employers; and health care purchasing groups or entities.

This definition of ''health care supplier'' reflects congressional intent that the Government not pay for items and services of untrustworthy individuals and entities, regardless of whether the individual or entity is paid by the programs directly or whether the items and services are reimbursed indirectly through claims of a direct provider. Individuals and entities that provide such indirect services have a significant impact on the cost and quality of health care, and have been the subject of final adverse actions related to health care fraud and abuse.

D. Health Plan

The definition of the term ''health plan'' in section 1128E of the Act is not meant to be exclusive or exhaustive. Rather, by using the word ''includes,'' the statutory definition contemplates that additional entities may be recognized as ''health plans'' if they meet the basic definition of ''providing health benefits.'' Thus, health plans may include those plans funded by Federal and State governments, including Medicare, Medicaid, the Department of Defense, the Department of Veterans Affairs, the Federal Employees Health benefits Plan of the Office of Personnel Management, and the Bureau of Indian Affairs programs. Under these regulations, the term ''health plan'' would be defined as a plan, program or organization that provides health benefits, whether directly or through insurance, reimbursement or otherwise. The term would include, but would not be limited to: (1) a policy of health insurance; (2) a contract of a service benefit organization; (3) a membership agreement with an HMO or other prepaid health plan; (4) a plan, program or agreement established, maintained or made available by an employer or group of employers, a practitioner, provider or supplier group, third-party administrator, integrated health care delivery system, employee welfare association, public service group or organization, or professional association; and (5) an insurance company, insurance service, self-insured employer or insurance organization which is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance. We have added the word ''organization'' to the description of the term ''health plan'' since health plans are generally offered by organizations, and we believe that Congress intended those organizations to be users of the HIPDB. In addition, credential reviews and fraud investigations are often conducted at the corporate level by organizations offering and managing managed care plans or other health benefit plans or services.

We also are including in this definition additional examples of other health plans which reflect both the wide variety of health benefit plans that are currently offered and the wide range of organizations that provide them. These examples include employers or other organizations that provide health care benefits for their employees or members, provider/supplier/practitioner groups that offer health care benefit plans under contract with an organization, and organizations that sell health care insurance. We invite public comment on the inclusion of additional examples in this listing for purposes of clarification and guidance.

In addition, to more clearly define this term, we are including two clarifying phrases in the regulatory definition. First, we would add the word ''reimbursement'' to the description of the methods by which health plans provide benefits. For example, some employers directly reimburse employees for their health care expenditures through a voucher system. We also propose including the phrase ''but is not limited to'' to the description of types of arrangements included in the definition. We believe that this clarification of the statutory language is important to ensure that, as arrangements and mechanisms used by health plans to provide health care benefits evolve, they will not be excluded by the language in the definition.

E. Licensed Health Care Practitioner, Licensed Practitioner, and Practitioner

While section 1128E of the Act refers to the terms health care ''provider, practitioner or supplier'' as the subject of reports to the HIPDB, the statute only provides a definition of ''practitioner.'' We are proposing to define ''practitioner'' consistent with section 1128E(g)(2) of the Act. As a result, for purposes of these regulations, with respect to a State, a ''licensed health care practitioner,'' a ''licensed practitioner'' or ''practitioner'' would mean an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized). This definition includes, but is not limited to, physicians, nurses, chiropractors, podiatrists, emergency medical technicians, physical therapists, pharmacists, clinical psychologists, acupuncturists, dieticians, aides, and licensed or certified alternative medicine practitioners such as homeopaths and naturopaths.

F. Other Adjudicated Actions or Decisions

We are including a definition to clarify the types of ''other adjudicated actions or decisions'' that Congress authorized the Department to collect under section 1128E(g)(A)(v) of the Act. We believe that this term should encompass actions that are consistent with the characteristics of the specific final adverse actions already listed in the statute. Accordingly, the term ''other adjudicated actions or decisions'' would refer to an official action taken by a Federal or State governmental agency or health plan against a health care provider, supplier, or practitioner based on acts or omissions that affect, or could significantly affect, the delivery of a health care item or service. For example, an official action taken by a Federal or State governmental agency includes, but is not limited to, a personnel-related action such as suspensions without pay, reductions in pay, reductions in grade, terminations or other comparable actions. A hallmark of any valid adjudicated action or decision is the existence of a due process mechanism. In general, if an ''adjudicated action or decision'' follows an agency's established administrative procedures (which ensure due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. For health plans that are not government entities, an action taken following adequate notice and hearing requirements that meet the standards of due process set out in section 412(b) of the HCQIA (42 U.S.C. 11112(b)) also would qualify as a reportable action under this definition. Under section 412(b) of HCQIA, the procedure should involve provision (or voluntary waiver by the subject) of the notice of the proposed action, notice of a hearing, and conduct of the hearing. The fact that a subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final.

In these regulations, the word ''adjudicated'' is not viewed as a restriction that limits these actions only to those resulting from a governmental

judicial process. Rather, the word implies that in order for an action or decision to be reportable it must adhere to basic guidelines of due process. Examples of ''other adjudicated actions or decisions'' include administrative agency sanctions and clinical privilege actions.

We believe that any final adverse action included in accordance with this language must be final, have been subject to adjudication, and be related to delivery of a health care item or service. We also believe that the inclusion of actions taken against a practitioner's clinical privileges, including those taken by health plans, should be included if they meet the above tests. Discussions with health plan representatives, and examination of reporting patterns by health plans to the NPDB, indicate that health plans do take final actions against a practitioner's clinical privileges which meet these three criteria. It should be noted that final adverse actions taken against clinical privileges must result from acts of commission or omission related to professional competence or professional conduct. Matters unrelated to the professional competence or professional conduct of a health care practitioner resulting in a final adverse action against clinical privileges should not be reported to the HIPDB. We believe that in the absence of statutory language regarding the definition of ''adjudicated,'' this interpretation recognizes the evolving mechanisms by which final adverse actions are taken by reporting entities, such as State agencies and health plans, to protect the public against health care fraud and abuse. Moreover, it recognizes the substantial shift in care from inpatient facilities to the outpatient arena and the concomitant shift in the meaning of ''clinical privileges'' from that associated with inpatient care, to that associated with outpatient care, especially in the managed care setting.

In addition to proposing these definitions in § 61.3, we also have contemplated including a definition for the term ''health care abuse.'' The statute does not define this term, and we are electing not to define the term at this time. The range of reportable final adverse actions specified in the statute suggests that the Congress intended a broad interpretation of ''health care abuse.'' There is wide variation in the term's meaning within the law enforcement and health care communities. For the purposes of this statute, we believe ''health care abuse'' relates to provider, supplier and practitioner practices that are inconsistent with accepted sound fiscal, business or medical practices which directly or indirectly may result in (1) unnecessary costs to the program; (2) improper payment; (3) services that fail to meet professionally recognized standards of care or are medically unnecessary; or (4) services that directly or indirectly result in adverse patient outcomes or delays in appropriate diagnosis or treatment. We believe health care abuse also would include verbal, sexual, physical or mental abuse, corporal punishment, involuntary seclusion or patient neglect, or misappropriation of patient property or funds. We specifically invite comments on whether a definition of the term ''health care abuse'' should be included in the regulations and, if so, what definition would most clearly capture the range of reportable final adverse actions specified by Congress.

For health plans that are not government entities, an action taken following adequate notice and hearing requirements that meet the standards of due process set out in section 412(b) of the HCQIA also would qualify as a reportable action under this definition. Under section 412(b) of the HCQIA, the procedure should involve provision (or voluntary waiver by the subject) of notice of the proposed action, notice of a hearing and conduct of the hearing.

2. When Information Must be Reported

The statute requires that Federal and State government agencies and health plans report final adverse actions ''regularly but not less often than monthly.'' Because an exclusion or licensing action may *be effectuated* at a later date than when the action is actually taken, we are proposing giving maximum flexibility to agencies in reporting final adverse actions in a timely manner. According, we are proposing in § 61.5 that information be submitted to the HIPDB within 30 calendar days from (1) the date the final adverse action was taken, (2) the date when the reporting entity became aware of the final adverse action, or (3) by the close of the entity's next monthly reporting cycle, whichever is later. To capture any differing dates, the date of the final adverse action was taken, its effective date and duration would all be contained in the information reported to the HIPDB to be set forth in our discussion of the specific reporting requirements in proposed §§ 61.7, 61.8, 61.9, 61.10 and 61.11 below.

We acknowledge that reporters currently may not be able to provide all of the proposed data elements. We are proposing to set forth in §§ 61.7, 61.8, 61.9, 61.10, and 61.11 a list of mandatory data elements. In addition, in these sections, we also would list data elements that should be reported to the data bank when known.

It should be noted, however, that the statute requires the reporting and disclosure of Social Security numbers and Federal Employer Identification numbers. Specifically, section 1128E(b)(2)(A) of the Act mandates that Federal and State government agencies and health care plans collect and report Social Security numbers and Federal Employer Identification numbers for the purposes of reporting to the HIPDB. As a result, the Secretary intends to request Social Security numbers and Federal Employer Identification numbers for all reporters and queriers requiring explicit matching of specific names to HIPDB adverse action reports. We recognize the possibility that providing these identifiers for purposes of requesting information may present a burden for some classes of users. However, the collection of Social Security numbers and Federal Employer Identification numbers will provide a greater confidence level in the system's matching algorithm of health care providers, suppliers and practitioners. It also will maximize the system's ability to prevent the erroneous reporting and disclosure of health care providers, suppliers and practitioners. The proper matching of individuals based on personal identifiers, such as Social Security numbers, strengthens the State's ability to detect individuals who move from State to State without disclosure or discovery of previous damaging performance.

3. Reporting Errors, Omissions, Revisions and Actions on Appeal

Section 1128E (c)(2) of the Act requires that each government agency and health plan report corrections to information previously submitted to the HIPDB in such form and manner as the Secretary prescribes by regulation. Accordingly, the HIPDB has been designed to comply with the statutory requirements and the Department's principles of fair information practice. In proposed § 61.6 of these regulations, we are indicating that if any errors or omissions in the final adverse action are discovered after the information has been reported, the person or entity that reported such information must send an addition or correction to the HIPDB within 60 calendar days of the discovery. Any revision to the action or to appeal status must similarly be reported within 30 calendar days after the reporting entity learns of such revision. In turn, as indicated above, each subject of a report will receive a copy when it is entered into the HIPDB

and a copy of all revisions and corrections to the report. It should be noted that this is not an opportunity for the subjects to request readjudication of their cases; it is only for the reporting entity to correct any errors or omissions in the information.

4. Reporting Licensure Actions Taken by Federal or State Licensing and Certification Agencies

Under section 1128E(g)(1)(A)(iii) of the Act, Federal and State licensing and certification agencies must report to the HIPDB all of the following final adverse actions that are taken against a health care provider, supplier, or practitioner—

(1) Formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation;

(2) Any other loss of the license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise; and

(3) Any other negative action or finding by such Federal or State agency that is publicly available information.

Proposed § 61.7 is intended to address these reporting licensure actions taken by Federal and State licensing and certification agencies. In § 61.7, the phrase ''other negative action or finding'' by a Federal or State licensing and certification authority would mean any action or finding that is publicly available and rendered by a licensing or certification authority. These actions or findings include, but are not limited to, imposition of civil money penalties (CMPs) and administrative fines, limitations on the scope of practice, injunctions and forfeitures.

This definition also would include final adverse actions occurring in conjunction with settlements in which no findings or admissions of liability have been made, and that would otherwise be reportable under the statute. By defining ''other negative action or finding'' in this way, we believe that Federal or State licensing and certification authorities will accommodate State to State variation when determining adverse actions in reporting negative actions or findings to the HIPDB, provided that those actions or findings are available publicly.

The statute specifically requires reporting of a health care provider, supplier or practitioner who voluntarily surrenders a license or certification. Based on extensive discussions with various State agencies, we have been advised that voluntary surrender and non-renewal of licensure and provider participation agreements are used as means to exclude questionable health care providers, suppliers and practitioners from participating in Federal and State health care programs. These voluntary surrenders and non-renewal actions result in allowing health care providers, suppliers or practitioners to move from State to State without detection. Therefore, for reporting purposes, the term ''voluntary surrender'' is defined to include a surrender made after a notification of investigation or a formal official request by Federal or State licensing or certification authorities for a health care provider, supplier or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action. We are seeking guidance and public comment on the frequency of such actions taken in lieu of sanctions, as well as the utility of such information to eligible queriers of the HIPDB.

We recognize that many voluntary surrenders are not a result of the type of adverse action that are intended for inclusion in the HIPDB. Therefore, we are proposing that voluntary surrenders and licensure non-renewals due to nonpayment of licensure fees, changes to inactive status and retirements be excluded from reporting to the HIPDB unless they are taken in combination with one or more of the circumstances listed above, in which case they would be reportable.

In addition, we note that the NPDB currently receives adverse action reports on sanction and disciplinary actions concerning physicians and dentists related to professional competence or conduct. Under section 1128E of the Act, however, the only limitation on a reportable disciplinary action is that it must be a formal or official action; it need not be specifically related to professional competence or conduct. The Department recognizes that licensure actions reported by Boards of Medical and Dental Examiners concerning physicians and dentists in the NPDB overlap with the reportable actions under this statute. Therefore, we are proposing to implement this section in a manner to avoid duplication with the reporting requirements established for the NPDB under the HCQIA. Consistent with congressional intent, we will ensure that the reports required under both Acts will only be required to be reported once.

5. Reporting Federal or State Criminal Convictions Related to the Delivery of a Health Care Item or Service

Under section 1128E(g)(i)(A)(ii) of the Act, Federal and State law enforcement and investigative agencies must report criminal convictions against health care providers, suppliers, or practitioners. Because the statute requires that a criminal conviction must be related to the delivery of a health care item or service to be reportable, we believe that the congressional intent is to limit the types of convictions reported to the HIPDB. Thus, under proposed § 61.8, we are indicating that criminal convictions unrelated to the delivery of health care items or services would not be reported under this section.

6. Reporting of Civil Judgments in Federal or State Court Related to the Delivery of a Health Care Item or Service

In accordance with section 1128E(g)(1)(A)(i) of the Act, proposed § 61.9 would indicate that Federal and State law enforcement and investigative agencies, and health plans must report civil judgments related to the delivery of a health care item or service (except those resulting from medical malpractice) against health care providers, suppliers or practitioners. Civil judgments must be entered or approved by a Federal or State court. This reporting requirement does not include Consent Judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

7. Reporting Exclusion From Participation in Federal or State Health Care Programs

Proposed § 61.10, in accordance with section 1128E(g)(1)(A)(iv) of the Act, states that the Office of Inspector General (OIG) must report health care providers, suppliers or practitioners excluded from participating in Federal or State health care programs. This includes exclusions that were made in a matter in which there also was a settlement that is not reported because no findings or admissions of liability had been made.

8. Reporting Other Adjudicated Actions or Decisions

Proposed § 61.11 would address the reporting of other adjudicated actions or

decisions. Although not specifically required by the statute, we believe that ''any other adjudicated actions or decisions'' should relate to the delivery of a health care item or service, as do criminal convictions and civil judgments collected under the statute. In addition, we are proposing in this section that a due process mechanism is available with all adjudicated actions or decisions. Examples of an adjudicated action or decision would include, but would not be limited to, orders by an administrative law judge, CMPs and assessments, revocations, debarments or other restrictions from participating in Federal or State government contracts or programs, liquidation, dissolution, license cancellation, or revocations or limitations on clinical privileges or staff privileges by a health plan. We believe that this definition encompasses actions that are consistent with the characteristics of the specific final adverse actions already defined by statute.

9. Fees Applicable to Requests for Information

Section 61.13 proposes fees that would apply to all requests for information from the HIPDB. However, for purposes of verification and dispute resolution, the HIPDB does intend to provide a copy—automatically, without a request and free of charge—of every record to the health care provider, supplier or practitioner who is the subject of the report. The Act exempts Federal agencies from these fees.

The fees to be charged would be based on the full costs of operating the database, as authorized in section 1128E(d)(2) of the Act; criteria for assessing fees would be based on the guidelines set forth in OMB Circular A–25. These costs would encompass all direct and indirect costs of disclosure and of providing such information, including but not limited to, (1) direct and indirect personnel costs; (2) physical overhead, consulting, and other indirect costs; (3) agency management and supervisory costs; and (4) costs of enforcement, collection, research, establishment, regulations and guidance. For maximum efficiency, we intend for the HIPDB to be an all-electronic system, with all fees collected through the most cost-effective methods (such as credit card and electronic funds transfer).

While these regulations are intended to set forth the criteria for establishing the fees and the procedures for establishing and collecting fees, the actual amounts of the fees will be published in periodic notices issued by the Department in the **Federal Register**.

10. Confidentiality of HIPDB Information

Proposed § 61.14 addresses the confidentiality requirements that would apply to all information obtained from the HIPDB. We believe that these confidentiality requirements are clearly specified in sections 1128E(b)(3) and (d)(1) and 1128C(a)(3)(B)(ii) of the Act. Specifically, section 1128E(b)(3) of the Act requires the Secretary to protect the privacy of individuals receiving health care services when determining what information is required. Section 1128E(d)(1) of the Act provides that information in the HIPDB will be available to Federal and State government agencies and health plans. Section 1128C(a)(3)(B)(ii) of the Act requires the Secretary to assure that HIPDB information is provided and utilized in a manner that appropriately protects the confidentiality of the information. As a result, we are proposing that information from this system be confidential and disclosed only for the purpose for which it was provided. Appropriate uses of the information would include the prevention of fraud and abuse activities and improving the quality of patient care.

We believe that this proposed provision does not go beyond the requirements set forth in the Act. The requirements would not prevent an authorized user from sharing information from the HIPDB within the entity that requested it, as long as the information is used solely for the purpose for which it was provided. However, in accordance with section 1128E(b)(3) of the Act, information obtained by a government contractor, e.g., a Medicare carrier, an intermediary or auditor, may only be used in the furtherance of its contractual responsibilities and in conformity with protecting the identity of individuals receiving health care services.

We recognize that this data bank is subject to the Privacy Act (5 U.S.C. 552a), which protects the privacy of individually identifiable records held by a Federal agency that relate to the subject of the final adverse action. We will publish a notice for public comment for purposes of establishing a Privacy Act exception for the HIPDB. We are not including in the data bank any individually identifiable patient records.

11. How To Dispute the Accuracy of HIPDB Information

Section 61.15 of these proposed regulations sets forth the procedures for submitting a statement, filing a dispute, and revising disputed information in a previously submitted report. The subject may dispute only the factual accuracy of the information contained in the HIPDB report concerning the individual or entity. We note that the Secretary will not review issues regarding the merits of the case, or the due process that the subject received. The dispute process affords the subject an opportunity to bring relevant factual information, including reversals of criminal convictions by an appeals court, to the attention of the reporter. If the reporter does not revise the information, the subject can request in writing, within 60 calendar days after receipt of the report, that the Secretary review the matter. After such review, the Secretary can remove the dispute status, correct the information, leave the information unchanged, void the report from the HIPDB or add a statement to the record for reports that are not voided. This dispute process is consistent with that for the NPDB.

12. Sanctions for Failure To Report

In addition to addressing the provisions from section 221(a) of Public Law 104–191, we also are proposing to incorporate into these regulations the new CMP sanctions provision for failure to report information to the data bank, as set forth in section 4331 of Public Law 105–33, the Balanced Budget Act of 1997. As a result, in §§ 61.9(d) and 61.11(d) we are indicating that any health plan that fails to report information on a final adverse action that is required to be reported will be subject to a CMP of not more than $25,000 for each such adverse action not reported. Such penalty would be imposed and collected in the same manner as CMPs under section 1128A(a) of the Act. We also intend to amend 42 CFR part 1003 in separate rulemaking to reflect this new CMP authority.

III. Implementation Schedule

Implementation of these regulations will be incremental and will begin by first including the following actions: (1) final adverse licensure actions taken against health care practitioners by Federal or State agencies responsible for the licensing and certification of such practitioners; (2) Federal criminal convictions and civil judgments related to the delivery of health care items or services against health care providers, suppliers or practitioners; and (3) exclusions of health care providers, suppliers or practitioners from participation in Federal and State health care programs. This phased-in process does not exempt reporters from collecting and maintaining information

required under the statute as of August 21, 1996. It also affords the reporter an opportunity to internally develop a mechanism for collecting all mandatory data elements. The Department will announce through issuance of notice(s) in the **Federal Register** a schedule when reporters are to begin reporting to, and when information will be available from, the HIPDB. Reporters to both the HIPDB and the NPDB will not be required to report their actions separately to each data bank. A revised reporting form will be used to accommodate both systems, thus only requiring one report of each action that is reportable to both the HIPDB and the NPDB when this form is approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995.

All final adverse action information as of August 21, 1996 will be reported to the HIPDB.

IV. Regulatory Impact Statement

Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive and equity effects). The Unfunded Mandates Reform Act, Public Law 104–4, requires that agencies prepare an assessment of anticipated costs and benefits on any rulemaking that may result in an annual expenditure by State, local or tribal government, or by the private sector of $100 million or more. In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. We believe that the resources required to implement the requirements in these regulations would be minimal. Consistent with the statute, these proposed regulations identify certain data elements for reporting that are mandatory and specify other discretionary data elements for reporting. Many of the mandatory and discretionary data elements being set forth in this proposed rulemaking are already collected and maintained on a routine basis for a variety of purposes, and should not result in additional costs or in new and significant burdens on reporting entities. In consultation with States, the Department has been made aware that States routinely collect and maintain much of this information and are already reporting information on health care practitioners to the NPDB. Many licensing boards also routinely collect and report much of this information to national organizations such as the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, American Association of State Social Work Boards, Federation of State Medical Boards and the Association of State and Provincial Psychology Boards. In addition, State Survey and Certification agencies also are required to report adverse information to HCFA on certain health care providers, suppliers and practitioners. Additionally, on a continuous basis, the OIG routinely collects and maintains sanction data on health care providers, suppliers and practitioners excluded from government health care programs. Since we recognize that some classes of reporters may not collect or maintain the full array of data elements contemplated for inclusion into the data bank (e.g., names of affiliated or associated health care entities, or a DEA registration number), we are classifying certain data elements to be reported when known. We intend not to impose new or added burdens on reporters and are proposing to give reporters the option of omitting certain discretionary data elements that they do not maintain or to which they do not have access.

We have determined that this proposed rulemaking would not meet the criteria for a major rule, as defined by Executive Order 12866. As indicated above, these proposed regulations are designed to establish procedures for reporting to and releasing from the HIPDB, information on health care providers, suppliers or practitioners against whom final adverse actions have been taken. According to the National District Attorneys Association, the annual number of criminal convictions is approximately 13 per State and civil judgments are approximately 9 per State each year. Based on the reporting patterns of health plans to the NPDB, we also believe that less than 0.1 percent (19) of the estimated 20,000 health plans will report to the HIPDB each year. As such, we do not anticipate that the data collection process will have a significant impact on State government agencies and health plans, and we believe that this rule would not have a major effect on the economy or on Federal and State expenditures.

Additionally, in accordance with the Unfunded Mandates Reform Act of 1995, we have determined the only costs (which we believe will not be significant) would include the ability to transmit the information electronically (e.g., Internet service) and additional staff hours needed to transmit the information. While we do not have sufficient information at this time to provide estimates of the number of State agencies impacted, the State licensing and certification agencies have estimated that the initial start-up cost will be $5,000 per State licensing and certification agency ($5,000 per State licensing and certification agency × 216 State agencies=$1,080,000). The Department estimates that the initial start-up cost will be less than $100 per health plan ($100 per health plan × 20,000 health plans=$2,000,000). Section 221(a) of HIPAA intends that the Federal government will not incur any costs for the operation and maintenance of the HIPDB; user fees are intended to cover the full costs of the HIPDB. For the reasons stated above, the Department has determined that this rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an annual expenditure of $100 million or more, and that a full analysis under the Act is not necessary.

In addition, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, we are required to determine if this rule will have a significant economic effect on a substantial number of small entities and, if so, to identify regulatory options that could lessen the impact. For purposes of this rule, we have defined small entities as nonprofit organizations and local government agencies; individuals and States are not included in this definition of small entities. Although the statute does not specify local government agencies as reporters,

we also have given States the option to decide the manner in which they will report, i.e., having one centralized point for reporting or having multiple agencies such as municipalities and local government agencies (including District and County attorneys) report independently to the HIPDB. If States elect to have multiple agencies reporting independently to the HIPDB, we have determined that both the burden and costs associated with reporting to the HIPDB will be minimal. According to the National District Attorneys Association, there are approximately 2,700 District Attorneys throughout the country and, as indicated above, there are approximately 13 criminal convictions per State each year related to health care violations and 9 civil judgments per State each year related to health care violations. Based on discussions with health plans and examination of reporting patterns of health plans to the NPDB, we also believe that less than 0.1 percent (19) of the estimated 20,000 health plans will report to the HIPDB each year. As a result, we have determined that this rule would affect less than 100 nonprofit and local government agencies overall. Thus, the Secretary certifies that these proposed regulations would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains information collection requirements necessitating clearance by OMB. As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this proposed rule to OMB for its review of these information collection requirements.

Collection of Information: The Healthcare Integrity and Protection Data Bank for Final Adverse Information on Health Care Providers, Suppliers and Practitioners.

Description: Information collected under §§ 61.6, 61.7, 61.8, 61.9, 61.11, 61.12 and 61.15 of this proposed rule would be used by authorized parties, specified in the proposed rule, to prevent health care fraud and abuse activities and to improve the quality of patient care.

Description of Respondents: Federal and State government agencies and health plans. The reports from Federal agencies are not subject to the PRA.

Estimated Annual Reporting: The Department estimates that the public reporting burden for this proposed rule is 132,733 hours.

The estimated annual reporting and querying burden is as follows:

Section No.	Number of respondents	Responses per respond't	Total responses	Hours per response (min)	Total burden hours
§ 61.6, Errors & Omissions	[1] 1,200	1	1,200	25	500
§ 61.6, Revisions/Appeal Status	[1] 1,000	1	1,000	75	1,250
§ 61.7:					
Licensure Actions: Disclosure by State Licensing Boards	[2] 1,836	3	5,500	75	6,875
Reporting by State Licensing Authorities	216	25.46	5,500	15	1,375
§ 61.8, Criminal Convictions	[3] 54	13	700	75	875
§ 61.9, Civil Judgments	[4] 62	8	500	75	625
§ 61.11, Other Adjudicated Action or Decision	[5] 66	12	800	75	1,000
§ 61.12:					
Queries	[6] 5,601	201	1,127,512	5	93,959
Self-queries	60,000	1	60,000	25	25,000
Entity verification	[7] 5,000	1	5,000	10	833
Entity update	250	1	250	5	20
§ 61.12, Authorized agent designation [8]	100	1	100	10	16
§ 61.12, Authorized agent designation update	5	1	5	5	0.42
§ 61.15:					
Disputed Reports & Secretarial Review Initial Request	[9] 750	1	750	10	125
Request for Secretarial Review	37	1	37	480	296
Total	76,177		1,208,854		132,749

[1] Section 61.6 requires each government agency or health plan that reports information to the HIPDB to ensure the accuracy of the information. If there are any errors or omissions to the reports previously submitted to the HIPDB, the individual or entity that submitted the report to the HIPDB is also responsible for making the necessary correction or revision to the original report. If there is any revision to the action or the action is on appeal, the individual or entity that submitted the original report to the HIPDB is also responsible for reporting revisions and whether the action is on appeal. Based on corrections and revisions made to information contained in the NPDB, we have estimated that a total of 1,200 respondents will need to correct their reports each year and that a total of 1,000 respondents will need to revise actions originally reported, or to report whether an action is on appeal each year. Based on experience with the NPDB, a correction is expected to take 25 minutes to complete and submit. A revision is expected to take somewhat longer (75 minutes) because it involves completing a new report form rather that just correcting the individual items that are in error.

[2] Section 61.7 requires Federal and State agencies responsible for the licensing and certification of health care providers, suppliers and practitioners to report all disciplinary licensure actions to the HIPDB. Therefore, we estimate that approximately 34 State licensing boards in each State will report to the State licensing and certification authorities (54 States and territories × 34 licensing boards/per State = 1,836 State licensing and certification boards), and the State licensing and certification authorities (4 per State) will be responsible for reporting information to the HIPDB (54 States and territories × 4 State licensing and certification authorities/per State = 216 State licensing and certification authorities). We estimate that 5,500 reports will be submitted directly to the HIPDB each year, for an average of 25 reports per State licensing and certification authority and 3 reports per State licensing board. Since disciplinary licensure actions by State licensing authorities in the NPDB overlap with this statute, this estimate does not include the licensure actions that will be reported directly to the NPDB and transmitted from there to the HIPDB. The estimates include only those actions which are reported solely to the HIPDB, such as actions taken against certain health care providers and suppliers. The HIPDB will use similar forms and procedures for reporting as the NPDB. As a result, we estimate that it will take a State licensing board 75 minutes to complete and submit an initial report. We also estimate that it will take a State licensing and certification authority 15 minutes to verify the accuracy and completeness of the information contained in the initial report before electronically submitting the information to the HIPDB.

[3] Section 61.8 requires Federal and State prosecutors and investigative agencies to report criminal convictions related to the delivery of a health care item or service. Based on the number of health care providers, suppliers and practitioners convicted by the Federal government, we estimate that there will be an approximate total of 700 State criminal convictions reported to the HIPDB each year, for an average of 13 convictions per State. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

[4] Section 61.9 requires Federal and State attorneys and investigative agencies and health care plans to report civil judgments against health care providers, suppliers and practitioners related to the delivery of a health care item or service. We estimate that there will be an approximate total of 500 civil judgments each year that will be reported by the 54 States Attorneys and an estimated 8 health plans, for a total of 62 reporters. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

[5] Section 61.11 requires Federal and State governmental agencies and health plans to report any adjudicated action or decision related to the delivery of a health care item or service against health care providers, suppliers and practitioners. We estimate that there will be an approximate total of 800 other adjudicated actions or decision reports submitted to the HIPDB each year by 54 State governmental agencies and an estimated 12 health plans, for a total of 66 reporters. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

[6] Certain queriers have access to both the NPDB and the HIPDB. When these entities query one data bank, they will automatically receive reports from both. The Department estimates that there will be 1,127,512 queries submitted to the HIPDB per year on health care providers, suppliers and practitioners, including an estimated 60,000 self-queries. These estimates include only queries submitted directly to the HIPDB; it does not include those transferred from the NPDB. The estimates of burden per response are based on experience with similar querying of the NPDB.

[7] To access the HIPDB, entities are required to certify that they meet section 1128E reporting and querying requirements by completing an Entity Registration form and submitting it to the HIPDB. The information collected on this form provides the HIPDB with essential information concerning the entity, such as name, address and entity type. Eligible entities, such as State licensing agencies or certain managed care organizations, that have access to both the NPDB and the HIPDB have already registered for the NPDB and are not required to register separately for the HIPDB. Entities eligible to access only the HIPDB must complete and submit the Entity Registration form. We estimate that it will take an entity 10 minutes to complete and submit the Entity Registration form to the HIPDB. If there are any changes in the entity's name, address, telephone, entity type designation, or query and report point of contact, the entity representative must update the information on the Entity Information Update form and submit it to the HIPDB. Of the 5,000 new registrants, we estimate 250 entities (5 percent of all new registrants) will need to update their organization's information each year.

[8] An eligible entity may elect to have an outside organization query or report to the HIPDB on its behalf. This organization is referred to as an authorized agent. Before an authorized agent acts on behalf of an entity, the eligible entity must complete and submit an Agent Designation form to the HIPDB Help Line. The information collected on this form provides the HIPDB with essential information concerning the agent, such as name address and telephone number. We estimate that 100 entities (2 percent of all new registrants) will elect an authorized agent to query or report to the HIPDB on their behalf. We estimate that it will take an entity 10 minutes to complete and submit the Agent Designation form to the HIPDB. Any changes to the authorized agent designation, such as routing of responses to queries or termination of an authorized agent, the eligible entity must update the information on the Agent Designation Update form and submit it to the HIPDB. We estimate that five of the 100 eligible entities will need to update their agent's information each year.

[9] Section 61.15 describes the process to be followed by a health care provider, supplier or practitioner in disputing the factual accuracy of information in a report and requesting Secretarial review of the disputed report. Based on experience with the NPDB, we estimate that 750 (10 percent of all new reports) will be entered into the ''disputed status.'' We estimate that it will take a health care provider, supplier or practitioner 10 minutes to notify the HIPDB to enter the report into ''disputed status.'' Of the 750 disputed reports, we estimate that only 37 reports (5 percent) will be forwarded to the Secretary for review. We estimate that it will take a health care provider, supplier or practitioner 8 hours to describe in writing which facts are in dispute and to gather supporting documentation related to the dispute.

Forms to be used in the day-to-day management of the HIPDB would include the following:

Form name	No. of respond	Respon per respond	Total respons	Hrs. per respon. (min)	Total burden hours	Wage rate	Total cost
Account Discrepancy	2,000	1	2,000	5	166	$ 15	$2,490
Electronic Funds Transfer Authorization	850	1	850	5	70	15	1,050
Entity Reactivation	500	1	500	5	41	15	615
Total	3,350		3,350		277		$4,155

Request for Comment: In accordance with the requirement of section 3506(c)(2)(A) of the PRA for opportunity for public comment on proposed data collection projects, comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations concerning the proposed information collection requirements should be sent to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503. The OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

V. Public Inspection of Comments and Response to Comments

Comments will be available for public inspection November 13, 1998 in Room 2A–44, Parklawn Building, Health Resources and Services Administration, Bureau of Health Professions, Division of Quality Assurance at 5600 Fishers Lane, Rockville, Maryland, on Monday through Friday of each week (Federal holidays excepted) between the hours of 10:00 a.m. and 2:00 p.m., (301) 443–2300.

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the

comments in the preamble of the final rule.

List of Subjects in 45 CFR Part 61

Health professions, Hospitals, Home health care agencies, Skilled nursing facilities, Durable medical equipment suppliers and manufacturers, Billing and transportation services, Health maintenance organizations, Health care insurers, Pharmaceutical suppliers and manufacturers, Reporting and recordkeeping requirements.

Accordingly, a new 45 CFR part 61 would be added as set forth below:

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

Subpart A—General Provisions

Sec.

Subpart B—Reporting of Information

Subpart C—Disclosure of Information by the Healthcare Integrity and Protection Data Bank

Authority: 42 U.S.C. 1320a–7e.

Subpart A—General Provisions

§ 61.1 The Healthcare Integrity and Protection Data Bank.

(a) Section 1128E of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services (the Secretary) to implement a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers, or practitioners. Section 1128E of the Act also directs the Secretary to maintain a database of final adverse actions taken against health care providers, suppliers, or practitioners. This data bank will be known as the Healthcare Integrity and Protection Data Bank (HIPDB). Settlements in which no findings or admissions of liability have been made will be excluded from being reported. However, any final adverse action that emanates from such settlements, and that would otherwise be reportable under the statute, will be reported to the HIPDB.

(b) Section 1128E of the Act also requires the Secretary to implement the HIPDB in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank (NPDB). In accordance with the statute, the reporter responsible for reporting the final adverse actions to both the HIPDB and the NPDB will be required to submit only one report, provided that reporting is made through the Department's consolidated reporting mechanism that will sort the appropriate actions into the HIPDB, NPDB or both.

(c) These regulations set forth the reporting and disclosure requirements for the HIPDB.

§ 61.2 Applicability of these regulations.

The regulations in this part establish reporting requirements applicable to Federal and State government agencies and to health plans, as the terms are defined under § 61.3 of this part.

§ 61.3 Definitions.

Act means the Social Security Act.

Affiliated or associated means health care entities with which a subject of a final adverse action has a business or professional relationship. This includes, but is not limited to, organizations, associations, corporations, or partnerships. It also includes a professional corporation or other business entity composed of a single individual.

Any other negative action or finding by a Federal or State licensing and certification agency means any action or finding that is a matter of public record and rendered by a licensing or certification authority, including but not limited to, imposition of civil money penalties and administrative fines, limitations on the scope of practice, liquidations, injunctions, forfeitures, and criminal convictions and civil judgments which, under that State's laws, are reportable to that State's boards or agencies which license or certify health care practitioners, providers or suppliers. This definition also includes final adverse actions (such as civil money penalties and administrative fees that occur in conjunction with settlements) in which no findings or admissions of liability have been made, and that would otherwise be reportable under the statute.

Civil judgment means a court-ordered action rendered in a Federal or State court proceeding, other than a criminal proceeding. This reporting requirement does not include consent judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

Clinical privileges includes, as appropriate to the organization, privileges, membership on the medical staff and other circumstances pertaining to the furnishing of medical care under which a physician, dentist or other licensed health care practitioner is permitted to furnish such care by a health plan or by a Federal or State agency that either administers or provides payment for the delivery of health care services.

Criminal conviction means a conviction as described in section 1128(i) of the Act.

Exclusion means a temporary or permanent debarment of an individual or entity from participation in any Federal or State health-related program, and that items or services furnished by such person or entity will not be reimbursed under any Federal or State health-related program.

Government agency includes, but is not limited to—

(1) The U.S. Department of Justice;

(2) The U.S Department of Health and Human Services;

(3) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the U.S. Department of Defense and the U.S. Department of Veterans Affairs;

(4) State law enforcement agencies, which include States Attorneys General;

(5) State Medicaid Fraud Control Units; and

(6) Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or licensed health care practitioners. Examples of such State agencies include Departments of Professional Regulation, Health, Social Services (including State Survey and Certification and Medicaid Single State agencies), Commerce and Insurance.

Health care fraud means fraud as defined in section 241 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191.

Health care provider means a provider of services as defined in section 1861(u) of the Act; any health care entity (including a health maintenance organization, preferred provider organization or group medical practice) that provides health care services and follows a formal peer review process for the purpose of furthering quality health care; or any other health care entity that, directly or through contracts, provides health care services.

Health care supplier means a provider of medical and other health care services as described in section 1861(s) of the Act; or any individual or entity, other than a provider, who furnishes or provides access to health care services, supplies, items or ancillary services (including, but not limited to, durable medical equipment suppliers and manufacturers of health care related items, pharmaceutical suppliers and manufacturers, health record services such as medical, dental and patient records, health data suppliers, and billing and transportation service suppliers). The term also includes any individual or entity under contract to provide such supplies, items or ancillary services, and any group, organization or company providing health benefits whether directly, or indirectly through insurance, reimbursements or otherwise, (including but not limited to, insurance producers such as agents, brokers, solicitors, consultants and reinsurance intermediaries, insurance companies, self-insured employers and health care purchasing groups or entities).

Health plan means a plan, program or organization that provides health benefits, whether directly, through insurance, reimbursement or otherwise, and includes but is not limited to—

(1) A policy of health insurance;

(2) A contract of a service benefit organization;

(3) A membership agreement with a health maintenance organization or other prepaid health plan;

(4) A plan, program, or agreement established, maintained or made available by an employer or group of employers, a practitioner, provider or supplier group, third party administrator, integrated health care delivery system, employee welfare association, public service group or organization or professional association; and

(5) An insurance company, insurance service or insurance organization that is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance.

Licensed health care practitioner, licensed practitioner, or practitioner mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

Other adjudicated actions or decisions means an official action taken by a Federal or State governmental agency or health plan against a health care provider, supplier or practitioner based on acts or omissions that affect or could significantly affect the delivery or payment of a health care item or service. For example, an official action taken by a Federal or State governmental agency includes, but is not limited to, a personnel-related action such as suspensions without pay, reductions in pay, reductions in grade, terminations or other comparable actions. A hallmark of any valid adjudicated action or decision is the existence of a due process mechanism. In general, if an ''adjudicated action or decision'' follows an agency's established administrative procedures (which ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. For health plans that are not government entities, an action taken following adequate notice and hearing requirement that meets the standards of due process set out in section 412(b) of the HCQIA (42 U.S.C. 11112(b)) also would qualify as a reportable action under this definition. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

Subpart B—Reporting of Information

§ 61.4 How information must be reported.

Information must be reported to the HIPDB as required under §§ 61.6, 61.7, 61.8, 61.9, 61.10 and 61.11 of this part in such form and manner as the Secretary may prescribe.

§ 61.5 When information must be reported.

(a) Information required under §§ 61.7, 61.8, 61.9, 61.10 and 61.11 of this part must be submitted to the HIPDB within 30 calendar days from the date the final adverse action was taken; the date when the reporting entity became aware of the final adverse action; or by the close of the entity's next monthly reporting cycle, whichever is later.

(b) The date of the final adverse action was taken, its effective date and duration would be contained in the information reported to the HIPDB under §§ 61.7, 61.8, 61.9, 61.10 and 61.11 of this part.

§ 61.6 Reporting errors, omissions, revisions or whether an action is on appeal.

(a) If errors or omissions are found after information has been reported, the reporter must send an addition or correction to the HIPDB. This is an opportunity only for the subjects to request the reporting entity to correct any errors or omissions in the information, and not for requests for readjudication of their cases.

(b) A reporter that reports information on licensure, exclusion, criminal convictions, civil or administrative judgments, or adjudicated actions or decisions under §§ 61.7, 61.8, 61.9, 61.10 or 61.11 of this part also must report any revision of the action originally reported. Revisions include reversal of a criminal conviction, reversal of a judgment or other adjudicated decisions or whether the action is on appeal, and reinstatement of a license.

(c) The subject will receive a copy of all reports, including revisions and corrections to the report.

(d) Upon receipt of a report, the subject—

(1) Can accept the report as written;

(2) May provide a statement to the HIPDB, either directly or through a designated representative, that will permanently append the report (The statement should be limited to 2,000 characters and will be included in the record. The HIPDB will distribute the statement to queriers (where identifiable), the reporting entity and the subject of the report. The HIPDB will not edit the statement; only the subject can, upon request, make changes to the statement.); or

(3) May follow the dispute process in accordance with § 61.15 of this part.

§ 61.7 Reporting licensure actions taken by Federal and State licensing and certification agencies.

(a) *What actions must be reported.* Federal and State licensing and certification agencies must report to the HIPDB the following final adverse actions that are taken against a health care provider, supplier or practitioner (regardless of whether the final adverse actions are the subject of a pending appeal)—

(1) Formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation;

(2) Any other loss of the license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender (including certification agreements or contracts for participation in Federal or State health care programs), non-renewability (excluding those due to nonpayment of fees, retirement, or change to inactive status) or otherwise; and

(3) Any other negative action or finding by such Federal or State agency that is publicly available information.

(b) *Information to be reported on individuals.* (1) Federal or State licensing and certification agencies must report the following information concerning a practitioner who is the subject of a final adverse action (regardless of whether the final adverse actions are the subject of a pending appeal)—

(i) Name;

(ii) Social Security number, and Federal Employer Identification number for individuals who possess one;

(iii) Sex;

(iv) Date of birth;

(v) Occupation;

(vi) Organization name and type;

(vii) Primary work address;

(viii) Name of each professional school attended and year of graduation;

(ix) With respect to professional license, certification or registration, the license, certification or registration number, the field of licensure, certification or registration and the name(s) of the State or Territory in which the license, certification or registration is held;

(x) Physician specialty, if applicable;

(xi) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA);

(xii) A description of the acts or omissions or other reasons for the action taken;

(xiii) A description of the action, if applicable, the date the action was taken, its effective date and duration, the amount of any monetary penalty, and whether the action is on appeal;

(xiv) Classification of the action in accordance with a reporting code adopted by the Secretary;

(xv) Name and address of the reporting entity, and the name of the agency taking the action;

(xvi) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity; and

(xvii) Name(s) of any health care entity with which the subject is affiliated or associated.

(2) Federal and State licensing and certification agencies should report, when known, the following concerning a practitioner who is the subject of a final adverse action—

(i) Other name(s) used;

(ii) If deceased, date of death;

(iii) Home address;

(iv) Federal license, certification or registration number(s) (such as a Drug Enforcement Administration (DEA) registration number and Medicare provider number(s));

(v) Type(s) of any health care entity with which the subject is affiliated or associated;

(vi) Address of each associated or affiliated health care entity;

(vii) NPI of each associated or affiliated health care entity, when issued by HCFA; and

(viii) Nature of subject's relationship to each associated or affiliated health care entity.

(c) *Information that must be reported on organizations.* (1) Federal or State licensing and certification agencies must report the following information concerning a provider or supplier who is the subject of a final adverse action (regardless of whether the final adverse actions are the subject of a pending appeal)—

(i) Name and type of provider or supplier;

(ii) Federal Employer Identification number, and Social Security number (when used as the Tax Identification number (TIN));

(iii) The provider's or supplier's address;

(iv) The provider's or supplier's license, certification, or registration number(s) and name(s) of the State or Territory in which the license, certification or registration is held (the license number against which the action is taken should be specified);

(v) NPI, when issued by HCFA;

(vi) A description of the acts or omissions or other reason for the action;

(vii) A description of the action, if applicable, the date the action was taken, its effective date and duration, the amount of any monetary penalty, and whether the action is on appeal;

(viii) Classification of the action in accordance with a reporting code adopted by the Secretary;

(ix) Name and address of the reporting entity, and the name of the agency taking the action;

(x) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity; and

(xi) Name(s) of any health care entity with which the subject is affiliated or associated.

(2) Federal and State licensing and certification agencies should report, when known, the following information concerning a provider or supplier who is the subject of a final adverse action (regardless of whether the final adverse actions are the subject of a pending appeal)—

(i) Federal license, certification or registration number(s) (such as a DEA registration number, Medicare provider number(s), Clinical Laboratory Improvement Act (CLIA) number);

(ii) Type(s) of any health care entity with which the subject is affiliated or associated;

(iii) Address of each associated or affiliated health care entity;

(iv) NPI of each affiliated or associated health care entity, when issued by HCFA;

(v) Nature of subject's relationship to each associated or affiliated health care entity; and

(vi) Total amount of monetary penalties and fines.

(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 61.8 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.

(a) *Who must report.* Federal and State prosecutors, including law enforcement and investigative agencies, must report criminal convictions against health care providers, suppliers and practitioners related to the delivery of a health care item or service.

(b) *Information to be reported on individuals.* (1) Entities described in paragraph (a) of this section must report the following information—

(i) With respect to the individual who is the subject of a criminal conviction—

(A) Full name;

(B) Social Security number, and Federal Employer Identification number for individuals who possess one;

(C) Date of birth;

(D) Sex;

(E) Occupation;
(F) Organization name and type;
(G) Primary work address;
(H) NPI, when issued by HCFA;
(I) Court or judicial venue in which the action was taken;
(J) Docket or court file number;
(K) Name of primary prosecuting agency;
(L) Prosecuting agency's case number;
(M) Length of incarceration, detention, probation, community service or other sentence;
(N) Amount of any monetary penalties, judgment, restitution or other order;
(O) Date of sentence;
(P) Description of acts or omissions and injuries upon which the action was based;
(Q) Nature of the final adverse action and whether such action is on appeal;
(R) Name(s) of affiliated or associated health care entities; and
(S) Statutory offenses and count(s), and
(ii) With respect to the reporting entity—
(A) Name and address of the reporting entity and its file number concerning the subject; and
(B) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.
(2) Entities described in paragraph (a) of this section should report, when known, the following information—
(i) With respect to the individual who is the subject of a criminal conviction—
(A) Other name(s) used;
(B) Home address;
(C) Physician specialty;
(D) Medicare provider number(s);
(E) Medicaid provider number(s) and State(s);
(F) DEA registration number(s);
(G) Federal Bureau of Investigation (FBI) number;
(H) Name of each professional school attended and year of graduation; and
(I) With respect to each professional license, certification or registration, the license, certification or registration number, the field of licensure, certification or registration, and the name(s) of the State or Territory in which the license, certification or registration is held, if known;
(ii) With respect to health care entities (if known) with which the subject of the criminal conviction is affiliated or associated—
(A) Type(s) of affiliated or associated health care entities;
(B) Address of each associated or affiliated health care entity;
(C) NPI of each associated or affiliated health care entity, when issued by HCFA; and
(D) Nature of subject's relationship to each associated or affiliated health care entity; and
(iii) With respect to the action—
(A) Investigative agencies involved; and
(B) Investigative agencies' case or file number.
(c) *Information to be reported on organizations.* (1) Entities described in paragraph (a) of this section must report the following information—
(i) With respect to the organization that is the subject of a criminal conviction—
(A) Entity's legal name;
(B) Name entity is doing business as;
(C) Business address;
(D) Federal Employer Identification number, and Social Security number (when used as the TIN);
(E) NPI when issued by the HCFA;
(F) Type of entity;
(G) Court or judicial venue in which the action was taken;
(H) Docket or court file number;
(I) Name of primary prosecuting agency;
(J) Prosecuting agency's case number;
(K) Length of sentence (e.g., for probation);
(L) Amount of any monetary penalty, judgment, restitution, or other orders;
(M) Date of sentence;
(N) Description of acts or omissions and injuries upon which the action was based;
(O) Nature of the final adverse action and whether such action is on appeal;
(P) Name(s) of affiliated or associated health care entities; and
(Q) Statutory offenses and count(s), and
(ii) With respect to the reporting entity—
(A) Name and address of the reporting entity and its file number concerning the subject; and
(B) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.
(2) Entities described in paragraph (a) of this section should report, when known, the following information—
(i) With respect to the organization that is the subject of a criminal conviction—
(A) Medicare provider number(s);
(B) Medicaid provider number(s) and State(s);
(C) DEA registration number(s);
(D) Health care provider's or supplier's license, certification or registration number(s), and the name(s) of the State or Territory in which the license, certification or registration is held;
(E) Names and titles of principal officers and owners;
(F) Investigative agencies involved; and
(G) Investigative agencies' case or file number; and
(ii) With respect to any health care entities (if known) with which the subject of the criminal conviction is affiliated or associated—
(A) Type(s) of affiliated or associated health care entities;
(B) Address of each associated or affiliated health care entity;
(C) NPI of each associated or affiliated health care entity, when issued by HCFA; and
(D) Nature of subject's relationship to each associated or affiliated health care entity.
(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 61.9 Reporting civil judgments related to the delivery of a health care item or service.

(a) *Who must report.* Federal and States Attorneys, investigative agencies and health plans must report civil judgments against health care providers, suppliers or practitioners related to the delivery of a health care item or service (regardless of whether the civil judgment is the subject of a pending appeal), with the exception of those resulting from medical malpractice.
(b) *Information to be reported on individuals.* (1) Entities described in paragraph (a) of this section must report the following information—
(i) With respect to the individual who is the subject of a judgment—
(A) Full name;
(B) Social Security number, and Federal Employer Identification number for individuals who possess one;
(C) Date of birth;
(D) Sex;
(E) Occupation;
(F) Organization name and type;
(G) Primary work address;
(H) NPI, when issued by HCFA;
(I) Court or judicial venue in which the action was taken;
(J) Docket or court file number;
(K) Name of primary prosecuting agency or civil plaintiff;
(L) Prosecuting agency's case number;
(M) Date of judgment;
(N) Amount of any monetary penalty, judgment, restitution, or other orders;
(O) Description of acts or omissions and injuries upon which the action was based;
(P) Nature of final adverse action and whether such action is on appeal;
(Q) Name(s) of affiliated or associated health care entities; and

(R) Statutory offenses and count(s), and

(ii) With respect to the reporting entity—

(A) Name and address of the reporting entity and its file number concerning the subject; and

(B) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(2) Entities described in paragraph (a) of this section should report, when known, the following information—

(i) With respect to the individual who is the subject of a judgment—

(A) Physician specialty, if applicable;

(B) Other name(s) used;

(C) Home address;

(D) Medicare provider number(s);

(E) Medicaid provider number(s) and State(s);

(F) DEA registration number(s);

(G) FBI number;

(H) Name of each professional school attended and year of graduation;

(I) With respect to each professional license, certification or registration, the license, certification, or registration number, the field of licensure, certification, or registration, and the name(s) of the State or Territory in which the license, certification or registration is held;

(J) Investigative agencies involved; and

(K) Investigative agencies' case or file number; and

(ii) With respect to any health care entities (if known) with which the subject of the judgment is affiliated or associated—

(A) Type(s) of affiliated or associated health care entities;

(B) Address of each associated or affiliated health care entity;

(C) NPI of each associated or affiliated health care entity, when issued by HCFA; and

(D) Nature of subject's relationship to each associated or affiliated health care entity.

(c) *Information to be reported on organizations.* (1) Entities described in paragraph (a) of this section must report the following information—

(i) With respect to the organization that is the subject of a judgment—

(A) Entity's legal name, if known;

(B) Name entity is doing business as;

(C) Business address;

(D) Federal Employer Identification number, and Social Security number (when used as the TIN);

(E) NPI, when issued by HCFA;

(F) Type of entity;

(G) Court or judicial venue in which the action was taken;

(H) Docket or court file number;

(I) Name of primary prosecuting agency or civil plaintiff;

(J) Prosecuting agency's case number;

(K) Date of judgment;

(L) Amount of any monetary penalty, judgment, restitution or other orders;

(M) Description of acts or omissions and injuries upon which the action was based;

(N) Nature of final adverse action and whether such action is on appeal;

(O) Name(s) of affiliated or associated health care entities; and

(P) Statutory offenses and count(s), and

(ii) With respect to the reporting entity—

(A) Name and address of the reporting entity and its file number concerning the subject; and

(B) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(2) Entities described in paragraph (a) of this section should report, when known, the following information—

(i) With respect to the organization that is the subject of a judgment—

(A) Medicare provider number(s);

(B) Medicaid provider number(s) and State(s);

(C) DEA registration number(s);

(D) Health care provider or supplier license, certification or registration number, and the name(s) of the State or Territory in which the license, certification or registration is held;

(E) Names and titles of principal officers and owners;

(F) Investigative agencies involved; and

(G) Investigative agencies' case or file number; and

(ii) With respect to any health care entities (if known) with which the subject of the judgment is affiliated or associated—

(A) Type(s) of affiliated or associated health care entities;

(B) Address of each associated or affiliated health care entity;

(C) NPI of each associated or affiliated health care entity, when issued by HCFA; and

(D) Nature of subject's relationship to each associated or affiliated health care entity.

(d) *Sanctions for failure to report.* Any health plan that fails to report information on an adverse action required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such adverse action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 61.10 Reporting exclusion from participation in Federal or State health care programs.

(a) *Who must report.* Federal and State government agencies must report health care providers, suppliers or practitioners excluded from participating in Federal or State health care programs, including exclusions that were made in a matter in which there was also a settlement that is not reported because no findings or admissions of liability have been made (regardless of whether the exclusion is the subject of a pending appeal) .

(b) *Information to be reported on individuals.* (1) The entity described in paragraph (a) of the section must report the following information—

(i) Name;

(ii) Social Security number, and Federal Employer Identification number for individuals who possess one;

(iii) Date of birth;

(iv) Sex;

(v) Occupation;

(vi) Primary work address;

(vii) Organization name and type;

(viii) NPI, when issued by HCFA;

(ix) Professional school and year of graduation;

(x) With respect to each professional license, certification or registration, the license, certification or registration number, the field of licensure, certification or registration, and the name(s) of the State or Territory in which the license, certification or registration is held;

(xi) Description of the action, the date the action was taken, its effective date and duration, and whether the action is on appeal;

(xii) Classification of the action in accordance with a reporting code adopted by the Secretary;

(xiii) Description of acts or omissions, and injuries, upon which the action was based;

(xiv) Name and address of the reporting entity, and the name of the agency taking the action;

(xv) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity; and

(xvi) Name(s) of any health care entity with which the subject is affiliated or associated.

(2) The entity described in paragraph (a) of this section should report, when known, the following information—

(i) Other name(s) used;
(ii) Home address;
(iii) Physician specialty;
(iv) Federal license, certification or registration number(s) (such as a DEA registration number, Medicare provider number(s));
(v) Type(s) of any health care entity with which the subject is affiliated or associated;
(vi) Address of each associated or affiliated health care entity;
(vii) NPI of each associated or affiliated health care entity, when issued by HCFA; and
(viii) Nature of subject's relationship to each associated or affiliated health care entity.

(c) *Information to be reported on organizations.* (1) An entity described in paragraph (a) of this section must report the following information for a health care provider or supplier—
(i) Name and type of provider or supplier;
(ii) Federal Employer Identification number, and Social Security number (when used as the TIN);
(iii) NPI, when issued by HCFA;
(iv) The provider's or supplier's address;
(v) The provider's or supplier's license, certification or registration number(s) and the name of the State or Territory in which the license, certification or registration is held (the license number against which the action is taken should be specified);
(vi) Description of the acts or omissions or other reason for the action;
(vii) Classification of the action in accordance with a reporting code adopted by the Secretary;
(viii) Description of the action, the date the action was taken, its effective date and duration;
(ix) Name and address of the reporting entity, and the name of the agency taking the action;
(x) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity; and
(xi) Name(s) of any health care entity with which the subject is affiliated or associated.

(2) An entity described in paragraph (a) of this section should report, when known, the following information for a health care provider or supplier—
(i) Federal license, certification or registration number(s) (such as a DEA registration number, Medicare provider number(s), CLIA number);
(ii) Type(s) of any health care entity with which the subject is affiliated or associated;
(iii) Address of each associated or affiliated health care entity;
(iv) NPI of each associated or affiliated health care entity, when issued by HCFA; and
(v) Nature of subject's relationship to each associated or affiliated health care entity.

(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 61.11 Reporting other adjudicated actions or decisions.

(a) *Who must report.* Federal and State governmental agencies and health plans must report other adjudicated actions or decisions related to the delivery of a health care item or service against health care providers, suppliers and practitioners (regardless of whether the other adjudicated actions or decisions are subject to a pending appeal).

(b) *Information to be reported on individuals.* (1) Entities described in paragraph (a) of this section must report the following information on individuals—
(i) Name;
(ii) Social Security number, and Federal Employer Identification number for individuals who possess one;
(iii) Sex;
(iv) Date of birth;
(v) Occupation;
(vi) Primary work address;
(vii) Organization name and type;
(viii) Name of each professional school attended and year of graduation;
(ix) With respect to each professional license, certification or registration, the license, certification or registration number, the field of licensure, certification or registration, and the name of the State or Territory in which the license, certification or registration is held;
(x) NPI, when issued by HCFA;
(xi) Description of the acts or omissions or other reason for the action;
(xii) Classification of the action in accordance with a reporting code adopted by the Secretary;
(xiii) Description of the action, date the action was taken, its effective date and duration, amount of any monetary penalty, and whether the action is on appeal;
(xiv) Name and address of the reporting entity, and the name of the agency taking the action;
(xv) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity; and
(xvi) Name(s) of any health care entities with which the subject is affiliated or associated.

(2) Entities described in paragraph (a) of this section should report, when known, the following information on individuals—
(i) Other name(s) used;
(ii) Home address;
(iii) Physician specialty;
(iv) Federal license, certification or registration number(s) (such as a DEA registration number, Medicare provider number(s));
(v) Type(s) of any health care entity with which the subject is affiliated or associated;
(vi) Address of each associated or affiliated health care entity;
(vii) NPI of each associated or affiliated health care entity, when issued by HCFA; and
(viii) Nature of subject's relationship to each associated or affiliated health care entity.

(c) *Information to be reported on organizations.* (1) Entities described in paragraph (a) of this section must report the following information on organizations—
(i) Name and type of provider or supplier;
(ii) Federal Employer Identification number, and Social Security number (when used as the TIN);
(iii) The provider's or supplier's address;
(iv) NPI, when issued by HCFA;
(v) The provider's or supplier's license, certification or registration number(s) and the name of the State or Territory in which the license, certification or registration is held (the license number against which the action is taken should be specified);
(vi) Description of the acts or omissions or other reason for the action;
(vii) Description of action, date the action was taken, its effective date and duration, and amount of any monetary penalty;
(viii) Classification of the action in accordance with a reporting code adopted by the Secretary;
(ix) Name and address of reporting entity, and the name of the agency taking the action;
(x) The name, title, and telephone number of the responsible official submitting a report on behalf of the reporting entity; and
(xi) Name(s) of any health care entities with which the subject is affiliated or associated.

(2) Entities described in paragraph (a) of this section should report, when known, the following information on organizations—
(i) Federal license, certification or registration number(s) (such as a DEA

registration number, Medicare provider number(s), CLIA number);

(ii) Type(s) of any health care entity with which the subject is affiliated or associated;

(iii) Address of each associated or affiliated health care entity, if known;

(iv) NPI of each associated or affiliated health care entity, when issued by HCFA;

(v) Nature of subject's relationship to each associated or affiliated health care entity; and

(vi) Name and titles of principal officers and owners.

(d) *Sanctions for failure to report.* Any health plan that fails to report information on an adverse action required to be reported under this section will be subject to a CMP of not more than $25,000 for each such adverse action not reported. Such penalty will be imposed and collected in the same manner as CMPs under section 1128A(a) of the Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

Subpart C—Disclosure of Information by the Healthcare Integrity and Protection Data Bank

§ 61.12 Requesting information from the Healthcare Integrity and Protection Data Bank.

(a) *Who may request information and what information may be available.* Information in the HIPDB will be available, upon request, to the following persons or entities, or their authorized agents—

(1) Federal and State government agencies;

(2) Health plans;

(3) A health care practitioner, provider, or supplier requesting information concerning himself, herself or itself; and

(4) A person or entity who requests aggregate information, which does not permit the identification of any particular patient, health care provider, supplier or practitioner. (For example, researchers can use the aggregate information to identify the total number of practitioners excluded from the Medicare and Medicaid programs. Similarly, health plans can use aggregate information to develop outcome measures in their efforts to monitor and improve quality care.)

(b) *Procedures for obtaining HIPDB information.* Eligible persons and entities may obtain information from the HIPDB by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees set forth in § 61.13 of this part. The HIPDB will comply with the Department's principles of fair information practice by providing each subject of a report with a copy when the report is entered into the HIPDB.

§ 61.13 Fees applicable to requests for information.

(a) *Policy on fees.* The fees described in this section apply to all requests for information from the HIPDB. However, for purposes of verification and dispute resolution, the HIPDB will provide a copy—automatically, without a request and free of charge—of every record to the health care provider, supplier or practitioner who is the subject of the report. The fees are authorized by section 1128E(d)(2) of the Act, and they reflect the full costs of operating the database. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register**.

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria—

(1) Direct and indirect personnel costs;

(2) Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;

(3) Agency management and supervisory costs;

(4) Costs of enforcement, research and establishment of regulations and guidance;

(5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and

(6) Any other direct or indirect costs related to the provision of services.

(c) *Assessing and collecting fees.* The Secretary will announce through periodic notice in the **Federal Register** the method of payment of fees. In determining these methods, the Secretary will consider efficiency, effectiveness and convenience for users and for the Department. Methods may include credit card, electronic funds transfer and other methods of electronic payment.

§ 61.14 Confidentiality of Healthcare Integrity and Protection Data Bank information.

Information reported to the HIPDB is considered confidential and will not be disclosed outside the Department, except as specified in §§ 61.12 and 61.15 of this part. Persons and entities receiving information from the HIPDB, either directly or from another party, must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph will prevent the disclosure of information by a party from its own files used to create such reports where disclosure is otherwise authorized under applicable State or Federal law.

§ 61.15 How to dispute the accuracy of Healthcare Integrity and Protection Data Bank information.

(a) *Who may dispute the HIPDB information.* The HIPDB will routinely mail or transmit electronically to the subject a copy of the report filed in the HIPDB. The subject of the report or a designated representative may dispute the accuracy of a report concerning himself, herself or itself within 60 calendar days of receipt of the report.

(b) *Procedures for disputing a report with the reporting entity.* (1) If the subject disagrees with the reported information, the subject must request, in writing within 60 calendar days of receipt of the report, that the HIPDB enter the report into ''disputed status.''

(2) The HIPDB will send the report, with a notation that the report has been placed in ''disputed status,'' to queriers (where identifiable), the reporting entity and the subject of the report.

(3) The subject must attempt to enter into discussion with the reporting entity to resolve the dispute. If the reporting entity revises the information originally submitted to the HIPDB, the HIPDB will notify the subject and all entities to whom reports have been sent that the original information has been revised. If the reporting entity does not revise the reported information, the subject may request that the Secretary review the report for accuracy.

(c) *Procedures for requesting a Secretarial review.* (1) The subject must request, in writing, that the Secretary of the Department review the report for accuracy. The subject must return this request to the HIPDB along with appropriate materials that support the subject's position. The Secretary will only review the accuracy of the reported information, and will not consider the merits or appropriateness of the action or the due process that the subject received.

(2) After the review, if the Secretary—

(i) Concludes that the information is accurate and reportable to the HIPDB, the Secretary will inform the subject and the HIPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report that describes the basis for the decision. The report will be removed from ''disputed status.'' The HIPDB will

distribute the corrected report and statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(ii) Concludes that the information contained in the report is inaccurate, the Secretary will inform the subject of the determination and direct the HIPDB or the reporting entity to revise the report. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The HIPDB will distribute the corrected report and statement (s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iii) Determines that the disputed issues are outside the scope of the Department's review, the Secretary will inform the subject and the HIPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The report will be removed from ''disputed status.'' The HIPDB will distribute the report and the statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iv) Determines that the adverse action was not reportable and therefore should be removed from the HIPDB, the Secretary will inform the subject and direct the HIPDB to void the report.

The HIPDB will distribute a notice to previous queriers (where identifiable), the reporting entity and the subject of the report that the report has been voided.

Dated: April 10, 1998.

June Gibbs Brown,

Inspector General.

Approved: June 9, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–29147 Filed 10–29–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 98–269]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking further comment on methods that it might use to choose among competing applications involving noncommercial educational (NCE) broadcast stations, both on the reserved and nonreserved portions of the broadcast spectrum. The Commission proposes to eliminate the current traditional hearing process, which has been costly and time consuming without making meaningful distinctions between applicants. It seeks comments on various alternatives, including lotteries and point systems. The intended effect is to improve methods for considering noncommercial educational broadcast applications, consistent with statutory requirements.

DATES: Comments are due on or before December 14, 1998. Reply comments are due on or before January 4, 1999.

ADDRESSES: Paper comments should be sent to Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Electronic comments should be sent via the Internet to http://www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Mass Media Bureau, Audio Services Division (202) 418–2780.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rule Making* (In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants), adopted October 7, 1998, and released October 21, 1998. The complete text of this *Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

Synopsis of Order

1. The Commission first issued a *Notice of Proposed Rule Making* in this proceeding in 1995 [60 FR 15275 March 23,1995]. The Commission is now issuing a *Further Notice of Proposed Rule Making* to seek comments on additional options and issues. The Commission proposes to discontinue its use of traditional comparative hearings to select among competing applicants for noncommercial educational (NCE) radio and television stations. It solicits comments on several alternatives.

2. With respect to applicants for channels reserved for NCE use, the Commission proposes to use either a lottery or a point system. A lottery would be weighted to give significant preference to applicants who would increase diversity of ownership and applicants controlled by a member or members of a minority group, as required by statute. A point system would have no required statutory components. The Commission seeks comment on various factors for which it might award points, including local diversity, fair distribution of service, technical parameters, and other factors. The Commission also seeks comments on tie breakers, to be used if two or more applicants receive the same number of points.

3. NCE applicants, along with commercial applicants, can also currently apply for channels not specifically reserved for NCE use. The Balanced Budget Act of 1997 requires that commercial licenses be awarded by auction but exempts certain NCE stations from auction. The Commission solicits comments on whether the statute would permit an auction between commercial and NCE applicants for nonreserved channels, with or without bidding credits for the NCE applicant. It also presents several non-auction alternatives including expanding the limited circumstances under which the Commission will reclassify a commercial channel as available for NCE use only in a particular area; considering NCE entities ineligible to apply for nonreserved channels altogether; and hybrid approaches consisting of a lottery/auction or point system/auction. The Commission invites comments and additional suggestions from the public.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–29065 Filed 10–29–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1146

[STB Ex Parte No. 628]

Expedited Relief for Service Inadequacies

AGENCY: Surface Transportation Board.

ACTION: Extension of time for filing reply comments.

SUMMARY: In a supplemental notice of proposed rulemaking served October 15, 1998, and published in the **Federal**

Register on October 20, 1998 (63 FR 55996) (October supplemental notice), the Surface Transportation Board requested the filing of supplemental reply comments on November 6, 1998. In response to a request filed by Edison Electric Institute (EEI), the Board is extending for one week (to November 13, 1998) the date for filing supplemental replies. The supplemental comment date of October 30, 1998, remains the same.

DATES: Supplemental reply comments are now due November 13, 1998.

ADDRESSES: An original plus 12 copies of all supplemental replies, referring to STB Ex Parte No. 628, must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, copies should be served upon all parties included in the service list issued by the Board in its notices served June 9 and 16, 1998, which are available on the Board's website (www.stb.dot.gov). The October supplemental notice contains further information concerning the availability of obtaining, copying, and seeing documents, and the requirements for electronic submission of documents.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a decision in this proceeding served May 12, 1998, and published in the **Federal Register** on May 18, 1998 (63 FR 27253), the Board instituted a proceeding to solicit comments on proposed rules that would establish expedited procedures for shippers to obtain alternative rail service from another carrier when the incumbent carrier cannot properly serve shippers. In the October supplemental notice, the Board requested comments on a request by the American Short Line and Regional Railroad Association (ASLRRA) for similar expedited procedures to be established for Class II and Class III railroads to obtain temporary access to an additional carrier under similar circumstances. Supplemental comments on the ASLRRA request are due October 30, 1998. Supplemental replies to such comments are due November 6, 1998.

In a request filed October 22, 1998, EEI asks that the supplemental reply comments be due on or before November 13, 1998. In support of its request, EEI submits that the one-week extension is needed, *inter alia*, to prepare meaningful replies and to coordinate with other parties, and to avoid conflict with two meetings outside Washington, D.C. on November 2–3 and November 4–6, involving a large number of shippers. EEI states that ASLRRA does not oppose the one-week extension. EEI's request is reasonable, and it will be granted.

Decided: October 27, 1998.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29155 Filed 10–29–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 101698B]

Fisheries off West Coast States and in the Western Pacific; Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces receipt of an application for an exempted fishing permit(EFP) that would allow an experimental fishery for northern anchovy in an area off San Francisco closed to vessels fishing for the purposes of reducing the catch into products such as fish meal and oil. Reduction fishing is prohibited in the Farallon Islands closure by 50 CFR 660.512 of the regulations implementing the Northern Anchovy Fishery Management Plan (FMP). The purpose of the proposed experiment is to investigate the consequences of conducting a small-scale reduction fishery in the area. If granted, the permit would allow fishing that otherwise would be prohibited by the FMP and its implementing regulations. NMFS may authorize such a permit pursuant to regulations at 50 CFR 600.745(b).

DATES: Comments must be received by November 30, 1998.

ADDRESSES: Send comments to Dr. William T. Hogarth, Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner or James Morgan at (562)980–4030).

SUPPLEMENTARY INFORMATION: The FMP and implementing regulations at 50 CFR 600.745(b) specify that EFPs may be issued to authorize fishing that otherwise would be prohibited by an FMP and set forth procedures for issuing permits.

NMFS has accepted an EFP application for review and has forwarded copies to the U.S. Coast Guard and the Director of the California Department of Fish and Game. The applicant proposes to harvest northern anchovy off the coast of California in the area of the Farallon Islands. This area has been closed to reduction fishing since implementation of the FMP in 1978 and, like other area closures in the FMP, was meant to avoid conflict between recreational vessels and what was then a high-volume reduction fishery. Fishing operations would most likely take place in the spring of 1999 with roundhaul gear and would involve from one to three vessels of 30 to 50 mt capacity.

The application will be discussed at the November 2–6, 1998, meeting of the Pacific Fishery Management Council, which will be held at the Doubletree Hotel Columbia River in Portland,OR 1401 N. Hayden Island Drive, Portland, OR 97217 (63 FR 54450, October 9, 1998). The decision on whether to issue an EFP and determinations on appropriate permit conditions will be based on a number of considerations, including recommendations made by the Council and comments received from the public. A copy of the application is available for review at the NMFS Southwest Regional Office (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–29085 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 210
Friday, October 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Whitehawk Timber Sale, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Boise National Forest will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of a proposed timber sale in the Whitehawk subwatershed of the Deadwood drainage.

The Lowman Ranger District of the Boise National Forest proposes to harvest approximately 5,000 acres in the Whitehawk subwatershed, Township 11 North, Ranges 7 and 8 East, Boise Meridian. Timber harvest would include regeneration harvest, commercial thinning, sanitation and salvage. Several temporary roads are proposed for construction to access stands which can be harvested using ground-based systems. A number of currently closed roads would be opened and/or reconstructed to facilitate ground-based and helicopter yarding. No timber harvest would occur within INFISH defined Riparian Habitat Conservation Areas, within the Deadwood Inventoried Roadless Area (IRA), or within the segment of the Deadwood River designated as eligible for Wild designation under the Wild and Scenic Rivers Act in the Forest Plan. Treatment harvest is proposed in portions of the Whitehawk IRA. The proposed action is designed to maintain water quality, wildlife habitat, and recreational opportunity spectrum in the project area within Forest Plan standards.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received by November 30, 1998 to ensure timely consideration. No scoping meetings are planned at this time.

ADDRESSES: Send written comments to Jackie Andrew, Project Coordinator, Lowman Ranger District, 7359 Highway 21, Lowman, ID 83637.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Jackie Andrew at 208–259–3361.

SUPPLEMENTARY INFORMATION: The proposal may result in the reduction in the number of acres in the Whitehawk IRA from the National Forest System. Proposals that may substantially alter the undeveloped character of an IRA require the preparation of an EIS. At this time, the Forest Service regards development of IRA's as an issue to be addressed in the EIS. An alternative which does not develop the Whitehawk IRA will be developed during the analysis process.

The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the draft EIS and final EIS. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**. The Responsible Official is David D. Rittenhouse, Forest Supervisor, Boise National Forest. The decision to be made is whether to harvest National Forest System timber and reduce natural and activity fuels through prescribed fire. The draft EIS is expected to be available for public review in February 1999, with a final EIS estimated to be completed in May 1999. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986), and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protest trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the

requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: October 19, 1998.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 98–29029 Filed 10–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on November 12–13, 1998, in Weaverville, California. On Thursday, November 12, the PAC will meet at the Weaverville Ranger Station, 210 Main Street Highway 299, for a field trip leaving the Ranger Station at 11 a.m. and returning at 5 p.m. On Friday, November 13, the meeting will be held at the Trinity County Board of Supervisor's Conference Room in the Trinity County Library, 211 N. Main Street, starting at 8 a.m. and adjourning at 2:45 p.m. Agenda items for Friday include: (1) Review of Thursday's Field Trip; (2) Fiscal Year 1998 Implementation Monitoring Report; (3) PAC Realignment Discussion; (4) Subcommittee Reports; and (5) a Public Comment Period. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Kalmath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468.

Dated: October 26, 1998.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 98–29091 Filed 10–29–98; 8:45 am]

BILLING CODE 3410–11–M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Special Meeting of the Commission To Hear the Status of the Siting of a Regional Low-Level Radioactive Waste Disposal Facility and Consider Closing the Commission's Administrative Office in Harrisburg, Pennsylvania

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Notice of special meeting.

SUMMARY: The Commission will hold a special meeting to hear the status of a lawsuit against the Commonwealth of Pennsylvania to stop the siting of a regional low-level radioactive waste (LLRW) disposal facility, hear a report from the Commonwealth of Pennsylvania on the status of suspending the siting process, review and reconsider budgets for 1998–99 and 1999–2000, consider amending the Commission's bylaws relating to a vacancy in the executive director position and when the annual meeting must be held, consider the disposition of the Commission's remaining funds, consider forming a siting restart committee, appointment of a representative to the Low-Level Waste Forum, consider performing a closeout audit of the Commission, consider retaining Pepper Hamilton LLP as Counsel to the Commission, and consider renewing the investment agreement with the Pennsylvania Office of the Treasurer.

DATES: The meeting will be held on Wednesday, December 2, 1998 from 9:00 a.m.–1:00 p.m. Most of the meeting will be open to the public. An executive session closed to the public will be held from about 9:15 a.m. to 10:00 a.m.

ADDRESSES: The meeting will be held at the Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

FOR FURTHER INFORMATION CONTACT: Marc S. Tenan, Executive Director, at 717–234–6295.

Dated: October 22, 1998.

Marc S. Tenan,

Executive Director.

[FR Doc. 98–29096 Filed 10–29–98; 8:45 am]

BILLING CODE 000–00–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 30, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Dispenser, Glue Tape and Refill Cartridge

8040–01–441–0169—Dispenser, Adhesive Tape, Temporary
8040–01–441–0173—Replacement Cartridge, Temporary
8040–01–441–0175—Dispenser, Adhesive Tape, Permanent

8040–01–441–0178—Replacement Cartridge, Permanent

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Service

Recycling Service

U.S. Army Garrison Hawaii (USAG–HI) installations
Aliamanu Military Reservation (AMR)
Fort Shafter (FS)
Helemano Military Reservation (HMR)
Tripler Army Medical Center (TAMC)
Wainae Recreation Center (WRC)
Wheeler Army Airfield (WAAF)
Schofield Barracks (SB)
Island of Oahu, HI

NPA: Goodwill Industries of Honolulu, Inc., Honolulu, Hawaii.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities has been proposed for deletion from the Procurement List:

Bedspread

7210–00–728–0182
7210–00–728–0183
7210–00–728–0180

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–29153 Filed 10–29–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and a service previously furnished by such agencies.

EFFECTIVE DATE: November 30, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 19, August 28, September 11 and 18, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 33631, 45996, 48696 and 49895) of proposed additions to and deletions from the Procurement List:

Additions

The following comments pertain to Warehouse Operation, the Dredge WHEELER Spare Parts Warehouse, 400 Edwards Avenue, Suite F, Harahan, Louisiana.

Comments were received from the current contractor for this service. The contractor stated that tasks to be performed did not appear to be suitable for people who are blind or severely disabled. These tasks include operating a forklift, making shipping crates, operating power tools, and lifting heavy items.

These tasks will in fact be performed by people who are blind, one of whom is a qualified forklift operator. Accordingly, the Committee has concluded that performance of this service is suitable for people who are blind.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Rag, Wiping

7920–01–454–1147

Red Shop Towels

7920–01–454–1148

Services

Call Center Services

Defense Logistics Information Service (DLIS)
Battle Creek Customer Support Center (CSC)
Federal Center, 74 North Washington Avenue, Battle Creek, Michigan

Food Service

U.S. Marine Corps Base, Dining Facilities, Quantico, Virginia

Janitorial/Custodial

Austin Memorial AFRC/AMSA #1, Austin, Texas

Warehouse Operation

The Dredge WHEELER Spare Parts Warehouse, 400 Edwards Avenue, Suite F, Harahan, Louisiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and service are hereby deleted from the Procurement List:

Commodities

Cover, Bed

7210–01–116–7856
7210–01–120–0679
7210–01–120–8019
7210–01–116–7855
7210–01–120–8018
7210–01–120–8009
7210–01–120–8017
7210–01–120–8014
7210–01–120–8016
7210–01–116–7853
7210–01–124–8303
7210–01–118–4085
7210–01–120–8022
7210–01–120–8021
7210–01–122–5015
7210–01–123–5149
7210–01–125–9250
7210–01–120–8015
7210–01–120–8012
7210–01–120–8011
7210–01–116–7859
7210–01–123–5148
7210–01–116–7858
7210–01–116–7860
7210–01–120–8020
7210–01–116–7857
7210–01–116–7854
7210–01–120–8013
7210–01–124–7626
7210–01–120–8010

Service

Grounds Maintenance

U.S. Army Reserve Center, 1816 East Main Street, Albemarle, North Carolina

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–29154 Filed 10–29–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Deletion to the Procurement List; Correction

In the document appearing on page 56905 FR Doc. 98–28468, in the issue of October 23, 1998, in the second and third column, a Cap, Garrison with multiple NSNs, each denominated by a National Stock Number (NSN), is listed as deleted from the Procurement List, effective November 23, 1998. This notice is corrected to delete only the following NSNs from the Procurement List:

Cap, Garrison

8405–01–232–5330
8405–01–232–5331
8405–01–232–5332
8405–01–232–5333
8405–01–232–5334
8405–01–232–5335
8405–01–232–5336
8405–01–232–5337
8405–01–232–5338
8405–01–232–5339
8405–01–232–5340
8405–01–232–5341
8405–01–232–5342
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8405–01–232–5347
8405–01–232–5348
8405–01–232–5349
8405–01–232–5350
8405–01–232–5351
8405–01–232–5352
8405–01–232–5353
8405–01–232–5354
8405–01–232–5355

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–29152 Filed 10–29–98; 8:45 am]

BILLING CODE 6353–01–P

CENSUS MONITORING BOARD

Notice of Public Meeting

SUMMARY: This notice, in compliance with PL 105–119, sets forth the meeting date, time and place for the third business meeting of the full Census Monitoring Board. The meeting agenda will include an examination of ongoing preparations by the Census Bureau for the 2000 Decennial Census.

DATES: The meeting will take place at 10:00 AM, Friday, November 6, 1998.

LOCATION: The meeting will be held in Room 2203, Rayburn House Office Building, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Contact Michael Miguel, Census Monitoring Board. Phone: 301–457–5080.

Fred T. Asbell,

Executive Director, Congressional Members.

Mark Johnson,

Executive Director, Presidential Members.

[FR Doc. 98–29176 Filed 10–29–98; 8:45 am]

BILLING CODE 1179–00–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of Government Employment.

Form Number(s): E–1, E–2, E–3, E–4, E–6, E–7, E–9.

OMB Approval Number: 0607–0452.

Type of Request: Reinstatement, without change.

Burden: 21,437 hours.

Number of Respondents: 20,244.

Avg Hours Per Response: 1 hour and 4 minutes.

Needs and Uses: The Census Bureau conducts the Annual Survey of Government Employment every year in March to collect data on the employment, payrolls, and hours worked by part-time employees of state and local governments for one pay period. Data are collected from all agencies, departments, and institutions of the fifty state governments and from a sample of all local governments (counties, cities, townships, school districts, and special districts).

Data collection is primarily accomplished through the use of mail canvass questionnaires that are tailored to the type of government, agency of institution being surveyed. Special data reporting arrangements exists with many state governments and some local governments to facilitate data reporting in ways that help minimize reporting burden.

Results from this survey are used directly in a variety of Federal programs: By the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts and to develop personal income statistics; by the Department of Housing and Urban Development for the allocation of

operating subsidies to local housing authorities; and by the Bureau of Labor Statistics to benchmark the government component in their monthly employment and earnings statistics program. Other users include state and local government executives and legislators, policy makers, economists, researchers, and the general public.

We are requesting that the survey be reinstated, with change after a brief lapse in clearance. The current OMB cleared expired September 30, 1998. Since the collection will not be conducted again until March 1999, this will not present a problem.

Affected Public: State, local, or tribal government, Federal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 161.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 21, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29107 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Corrosion-Resistant Carbon Steel Flat Products from Japan; Initiation of Anticircumvention Inquiry on Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Anticircumvention Inquiry; Cut-to-Length Carbon Steel Plate from Japan.

SUMMARY: In response to a request from USS-POSCO Industries (''UPI''), the Department of Commerce (the Department) is initiating an anticircumvention inquiry to determine whether imports of boron-added hot-dipped and electrolytic corrosion-resistant carbon steel sheet, falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on corrosion-resistant carbon steel flat products from Japan (58 FR 44163, August 19, 1993).

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–1398, or (202) 482–3818, respectively.

Applicable Statute

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR part 351 (April 1998).

SUPPLEMENTAL INFORMATION:

Background

On September 11, 1998, petitioner USS-POSCO Industries (''UPI'') requested that the Department conduct an anticircumvention inquiry pursuant to section 781(c) of the Tariff Act to determine whether imports of boron-added Japanese hot-dipped and electrolytic corrosion-resistant steel sheet, falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on corrosion-resistant carbon steel sheet from Japan. *See Antidumping Duty Orders: Certain Corrosion Resistent Carbon Steel Flat Products from Japan,* 58 FR 44163 (August 19, 1993).

Petitioner alleges that Japanese exporters have been circumventing the order by exporting hot-dipped and eletrolytically zinc coated sheet to which small amounts of boron (0.0020 and 0.0025 percent by weight based on laboratory tests of two samples) have been added. Carbon steel sheet, as defined by the HTSUS, has a maximum boron content of less than 0.0008% by weight. If the boron content is even slightly higher, the products enter the U.S. as a hot-dipped or electrolytic alloy rather than carbon steel sheet, thereby circumventing the order.

Petitioner argues that import statistics indicate that imports of hot-dipped and electrolytic alloy sheet to West Coast ports have risen from 25,256 NT in 1996 to 50,478 NT for the first 6 months of 1998, while imports of the carbon sheet equivalent have decreased from 16,013 NT in 1996 to 5,975 NT for the first six months of 1998. In addition, petitioner alleges that the addition of boron is generally immaterial (if not detrimental) to the performance characteristics of the merchandise, and that other than the addition of boron, the overall characteristics of the alloy vis-a-vis the carbon product are virtually identical. In fact, petitioner claims that, in some circumstances, the addition of boron could, in fact, hamper the product's formability. Petitioner also states that it has never received a customer inquiry for any product with boron added for any application.

On September 29, 1998, in response to the Department's request for additional information, the petitioner submitted an amendment to the request for an anticircumvention inquiry. The petitioner identified the source of one of the samples tested. Provided with the supplemental response was an affidavit of Petitioner's Senior Metallurgical Engineer. The Senior Engineer evaluated the Japanese boron-added product, and concluded that the sample exhibited the same physical properties as a non-boron product of similar specification. In addition, the evaluator concluded that the ''physical properties exhibited by the sample were not a result of the boron addition.'' *See* Petitioner's September 29, 1998 submission, *Affidavit of Senior Metallurgical Engineer,* page 1.

UPI secured a second sample from a different customer, and claims that it also ''exhibited the physical characteristics one would expect to achieve using a steel with identical chemical analysis in all respects except the addition of boron.'' *See* Petitioner's September 29, 1998 submission, *Affidavit of Karl W. Heralla,* page 2.

The petitioner maintains that during the last three years, in discussions between UPI's sales and marketing staff and with their customers (which were identified in Exhibit 4 of the petition), UPI has ''been expressly or implicitly told that their customers do not need boron—and often do not know if boron is present'' in the merchandise in question. *See* Petitioner's September 29, 1998 submission, *Affidavit of Karl W. Heralla,* page 2.

In its request to initiate an anticircumvention inquiry, petitioner stated its belief that Nippon Steel Corporation, NKK Corporation, and Nisshin Steel Corporation are producers of the subject merchandise with boron added. In addition, petitioner further

claimed that Kawasaki Steel Corporation, Kobe Steel Corporation, and Sumitomo Corporation are capable of producing and exporting subject merchandise with boron to the United States. *See* September 11, 1998 submission, at page 11.

Scope

The scope language contained in the final determination and antidumping duty order, as amended by a partial revocation, (*see Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Determination of Changed Circumstances Antidumping Duty Administrative Review and Revocation in part of Antidumping Duty Order*, 62 FR 66848 (December 22, 1997)), describes the covered merchandise as follows:

Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive. . . .

Corrosion-Resistant Carbon Steel Flat Products from Japan

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. Also excluded from this review are certain corrosion-resistant carbon steel flat products meeting the following specifications: widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See also Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 58 FR 44163 (August 19, 1993).

UPI describes the merchandise that is the subject of this anticircumvention inquiry as hot-dipped and electrolytic carbon steel sheet to which boron has been added.

Initiation of Anticircumvention Proceeding

Section 781(c) of the Act states that the Department may find circumvention of an order when products which are of the class or kind of merchandise subject to an antidumping duty order have been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' The Department notes that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors which should be considered before reaching an anticircumvention determination.

In conducting circumvention inquiries under section 781(c) of the Act, the Department has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.'' S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (''In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.'').

As discussed below, the petitioner has presented evidence with respect to each of these criteria. *See Anticircumvention Petition*, with attachments (September 11, 1998).

Overall Physical Characteristics

The current antidumping order covers corrosion-resistant carbon steel sheet from Japan. At issue is hot-dipped and electrolytic corrosion-resistant steel sheet, falling within the dimensions outlined in the scope of the order, to which boron has been added. The petitioner has tested two samples of Japanese origin, and determined that boron content ranged from 0.0020 to 0.0025 percent by weight. The petitioner claims that the addition of such small amounts of boron is immaterial to the performance characteristics of the final product. Continuing, the petitioner maintains that metallurgical considerations for the addition of boron would be to (1) increase the strength level in medium carbon sheets; (2) minimize earing in a low carbon specialty steel; or to (3) minimize secondary work embrittlement in ultra low carbon steels. Based on petitioner's experience of the end-uses of the product, and since all of the steel sheet at issue contains relatively higher levels of carbon (0.0349% and above), none of these considerations would be relevant, making the addition of boron metallurgically unnecessary.

Expectations of the Ultimate Users

According to petitioner's description of the sales and distribution process for

the merchandise in question, the boron-added material is sold to steel service centers, and is expected to be purchased by fabricators who would further process the steel. Petitioner maintains that consumers/fabricators of the product would not rely on or benefit from the presence of boron, and that the addition of the alloy into the carbon steel product offers no commercial advantage. In addition, petitioner notes that many fabricators, most of which are its own customers, are not aware of the presence of boron, and that it has never received any inquiry or request for boron-added carbon steel for any application. Finally, petitioner explains that in order to form the steel for specific uses, the product must have good ductility/formability characteristics. Thus, according to petitioner, the presence of high levels of boron would decrease the effectiveness of these characteristics, and would be counterproductive.

Use of the Merchandise

According to petitioner, there are two primary uses for the merchandise in question: (1) Hot-dipped galvanized steel sheet is used for metal studs, siding, roofing, decking, gutters, downspouts, culverts and other construction materials; (2) electrogalvanized sheet (primarily from Japan) and petitioner's hot-dipped sheet are used for computer chassis, frames and housing for gaming equipment. Petitioner maintains that there are no uses of hot-dipped or electrolytically coated low carbon steel sheet containing boron that cannot be fully met without boron. The addition of boron neither responds to a new need in the market nor improves the way existing technical needs are met.

Channels of Marketing

Petitioner states that it sells galvanized sheet without boron to virtually the same West Coast steel service centers that buy competing products from Japan with boron, and that since the boron-added and non-boron merchandise are used for precisely the same products on the West Coast, the sales channels in that region are the same. Petitioner also provided the names and addresses of service centers most likely to be involved in the distribution of the merchandise in question for the West Coast.

Cost of Modification

Petitioner alleges that the cost of adding boron to low carbon steel to attain a boron range of 0.0025 to 0.0045 percent by weight (similar to the sample examined by petitioner) is $0.55 per net ton, based on information obtained through one of its parent companies. This additional cost represents less than 0.1% of an approximate CIF value of $600.

Analysis

Other interested parties, Nippon Steel Corporation, NKK Corporation, Kawasaki Steel Corporation, and Sumitomo Metal Industries, Ltd., submitted comments arguing: (1) that the Department cannot initiate a ''minor alterations'' anticircumvention inquiry on a type of merchandise which the Department has previously determined to be outside the scope of that order; and (2) that the petitioner, UPI, does not have standing as a ''domestic interested party.''

These interested parties base their first argument on the decision of the Court of International Trade (CIT) in *Hylsa, S.A. v. United States*, Slip Op. 98–10 (February 3, 1998), which upheld the earlier decision of the CIT in *Wheatland Tube Co.* v. *United States*, 973 F. Supp. 149 (CIT 1997). The Department maintains that a determination under 19 CFR 353.29(i)(1) that merchandise is outside the scope of the order does not preclude the initiation of a ''minor alterations'' anticircumvention inquiry on the same merchandise [1]. For the reasons discussed in *Memorandum from Joseph Spetrini to Robert S. LaRussa, Anticircumvention Inquiry, Carbon Steel Plate from Canada*, (May 20, 1998) the Department believes that it is not precluded in initiating a ''minor alterations'' anticircumvention inquiry in the instant case. The interested parties have also argued that petitioner, UPI, does not have standing as a ''domestic interested party'', since one of the company's parents is a South Korean steel producer. However, we disagree with the parties' conclusions. As defined by section 771(9)(C) of the Act, an ''interested party'' is a manufacturer, producer, or wholesaler in the United States. Nippon Steel Corporation, et al. do not contest that UPI produces the subject merchandise in the United States. Therefore, the Department finds that UPI has standing under the statute. *See also Memorandum from Joseph Spetrini to Robert S. LaRussa*, October 26, 1998, Anticircumvention Inquiry, A–588–824, Corrosion-Resistant Carbon Steel Flat Products from Japan.

[1] *See* Memorandum from Joseph Spetrini to Robert S. LaRussa, May 20, 1998, Anticircumvention Inquiry, A–122–823, Carbon Steel Plate from Canada, at 5 and 6.

Based on our evaluation of the application, we determine that a formal inquiry is warranted. Accordingly, we are initiating a circumvention inquiry concerning the antidumping duty order on corrosion-resistant carbon steel flat products from Japan, pursuant to section 781(c) of the Tariff Act. In accordance with 19 CFR 351.225(l)(2), if we issue an affirmative preliminary determination, we will then instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

The Department will, following consultation with the interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j(c)) and 19 CFR 351.225.

Dated: October 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29161 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar from Japan: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1690 or (202) 482–4023, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) has received a request to conduct an administrative review of the antidumping duty order on stainless steel bar from Japan. On March 23, 1998, the Department initiated this administrative review covering the period February 1, 1997, through January 31, 1998.

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see* Memorandum from Richard Moreland to Robert LaRussa, Re: Extension of Time Limit for Administrative Review of Stainless Steel Bar from Japan, October 23, 1998). Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to February 28, 1999. The Department intends to issue the final results of review 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 26, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–29162 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received three requests to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(d), we are initiating this administrative review.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Stephanie Hoffman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or (202) 482–4198, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to section 351 of the regulations of the Department of Commerce (''the Department'') are to the current regulations, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On August 18 and 31, 1998, the Department received requests from Jyoti Steel Industries (''Jyoti''), Shah Alloys Ltd. (''Shah''), and Parekh Bright Bars Pvt. Ltd. (''Parekh''), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), for a new shipper review of the antidumping duty order on stainless steel bar from India. This order has an August semiannual anniversary month. On August 25 and 31 and September 1, 1998, we asked that the initial requests be supplemented. Jyoti submitted the requisite additional information on September 3, 1998; Shah and Parekh did so on October 9 and 22, 1998, respectively. Accordingly, we are initiating a new shipper review for Jyoti, Shah, and Parekh as requested. The period of review is February 1, 1998 through July 31, 1998.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2) Jyoti, Shah, and Parekh each provided certification that it did not export subject merchandise to the United States during the period of investigation; certification that, since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation; documentation establishing: (i) the date on which its stainless steel bar was first entered, or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which it first shipped the subject merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. We intend to issue the final results of this review not later than 270 days after the day on which this new shipper review is initiated.

Antidumping duty proceeding	Period to be reviewed
India: Stainless Steel Bar, A–533–810:	
Jyoti Steel Industries	02/01/98–07/31/98
Shah Alloys Ltd ...	02/01/98–07/31/98
Parekh Bright Bars Pvt. Ltd	02/01/98–07/31/98

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 351.214(e). Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: October 22, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–29163 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of

Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–048. Applicant: North Carolina State University, Purchasing Department, Box 7212, Raleigh, NC 27695. Instrument: Electron Microscope, Model JEM–2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to study the microstructure and chemistry of various semiconductors, semiconductor-based heterostructures, metals, metal alloys, composites, and ceramics including high-temperature superconductors and relative multilayered structures. In addition, the instrument will be used for students in the TEM course MAT 515 where they learn theoretical aspects of electron microscopy. Application accepted by Commissioner of Customs: October 1, 1998.

Docket Number: 98–049. Applicant: North Carolina State University, Purchasing Department, Campus Box 7212, Raleigh, NC 27695–7212. Instrument: Oxylite Oxygen Monitor, Model 2000. Manufacturer: Oxford Optonix Ltd., United Kingdom. Intended Use: The instrument will be used to measure oxygenation in spontaneous canine and feline tumors, a model of human cancer. These measurements will be done as part of ongoing studies of experimental cancer treatment, and the study of tumor physiology. The instrument will also be used to measure changes in tumor oxygenation produced by interventions such as breathing toxic gases or through use of vasoactive agents. The objectives of these experiments will be to more completely classify the extent of tumor oxygenation, to relate oxygen concentrations to treatment with radiation and/or hyperthermia and to assess changes in oxygenation during treatment. Application accepted by Commissioner of Customs: October 6, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–29164 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

October 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67626, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 3, 1998, you are directed to increase the limit for Categories 347/348 to 1,099,477 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29165 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Sublimits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting sublimits.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current sublimits for Categories 347 and 348 are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67628, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation

of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 30, 1998, you are directed to adjust the sublimits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
347/348	1,244,440 dozen of which not more than 777,774 dozen shall be in Category 347 and not more than 604,936 dozen shall be in Category 348.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29167 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following limits:

Category	Twelve-month restraint limit
239pt. [1]	1,978,854 kilograms.
Levels in Group I	
200	1,291,522 kilograms.
218	20,433,505 square meters.
219	6,888,123 square meters.
300	5,166,093 kilograms.
301–P [2]	5,166,093 kilograms.
301–O [3]	1,033,220 kilograms.
313–O [4]	24,108,430 square meters.
314–O [5]	55,104,980 square meters.
315–O [6]	34,440,612 square meters.
317–O/326–O [7]	14,458,502 square meters.
363	22,386,398 numbers.
369–D [8]	246,251 kilograms.
369–S [9]	344,406 kilograms.
603	2,366,980 kilograms.
604	805,793 kilograms of which not more than 516,609 kilograms shall be in Category 604–A [10].
607	3,444,059 kilograms.
611–O [11]	13,172,735 square meters.
613/614/615	52,050,604 square meters of which not more than 30,307,739 square meters shall be in Categories 613/615 and not more than 30,307,739 square meters shall be in Category 614.
617	18,796,051 square meters.
619	7,749,137 square meters.
620	7,749,137 square meters.
625/626/627/628/629	15,181,426 square meters of which not more than 12,054,214 square meters shall be in Category 625.
669–P [12]	7,263,806 kilograms.
Group II	
237, 331–348, 350–352, 359–H [13], 359pt. [14], 431, 433–438, 440, 442–448, 459pt. [15], 631, 633–652, 659–H [16], 659pt. [17], 831, 833–838, 840–858 and 859pt. [18], as a group.	315,975,858 square meters equivalent.
Sublevels in Group II	
331/631	1,879,793 dozen pairs.
334/634	671,592 dozen.
335/635/835	533,829 dozen.
336/636	344,406 dozen.
338/339	2,019,727 dozen.
340	309,966 dozen.

Category	Twelve-month restraint limit
341/641	731,863 dozen.
342/642	637,152 dozen.
345	327,186 dozen.
347/348/847	899,760 dozen.
351/651	258,304 dozen.
359–H/659–H	1,510,937 kilograms.
433	9,782 dozen.
434	12,075 dozen.
435	54,869 dozen.
438	18,112 dozen.
442	21,033 dozen.
638/639	2,380,393 dozen.
640	568,269 dozen.
645/646	344,406 dozen.
647/648	1,226,086 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[5] Category 314–O: all HTS numbers except 5209.51.6015.

[6] Category 315–O: all HTS numbers except 5208.52.4055.

[7] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[8] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[9] Category 369–S: only HTS number 6307.10.2005.

[10] Category 604–A: only HTS number 5509.32.0000.

[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[12] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[13] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[14] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[15] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[16] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[17] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directives dated December 5, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29168 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

October 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that H.H. Cutler has violated the requirements for participation in the Special Access Program, and has suspended H.H. Cutler from participation in the Program for the period beginning October 26, 1998 and ending January 25, 1999.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of H.H. Cutler during the period October 26, 1998 through January 25, 1999, and to prohibit entry by or on behalf of H.H. Cutler under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended H.H. Cutler from participation in the Special Access Program for the period October 26, 1998 through January 25, 1999. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of H.H. Cutler during the period October 26, 1998 through January 25, 1999. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of H.H. Cutler manufactured from fabric exported from the United States during the period October 26, 1998 through January 25, 1999.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29166 Filed 10–29–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, associated form, and OMB number: Request for Verification of Birth; DD Form 372; OMB Number 0704–0006.

Type of request: Reinstatement.

Number of respondents: 100,000.

Respones per respondent: 1.

Annual responses: 100,000.

Average burden per response: 5 minutes (0.083 hours).

Annual burden hours: 8,300.

Needs and uses: Title 10, U.S.C. 505, 3253, 5013, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a State or local agency requesting verification of the applicant's birth date. This verification of birth ensures that the applicant does not fall outside the age limitations, and that the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected public: State, local or tribal governments.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain benefits.

OMB desk officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29058 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, associated form, and OMB number: United States Air Force Academy Application (Precandidate Questionnaire/PCQ); USAFA Form 149; OMB Number 0701–0087.

Type of request: Reinstatement.

Number of respondents: 11,000.

Responses per respondent: 1.

Annual responses: 11,000.

Average burden per response: 24 minutes.

Annual burden hours: 4,400.

Needs and uses: The information collection requirement is necessary to obtain data on the candidate's high school academic background for use in determining eligibility and selection to the Air Force Academy. The information collected on this form is required by 10 U.S.C. 9346. The information is necessary in order to provide a preliminary assessment of an applicant's qualifications for admission. Without this early evaluation, both the Academy and applicant might proceed well into the admission cycle without a true understanding of the applicant's chances for admission.

Affected public: Individuals or households.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29059 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. § 946(a), to be held at the Naval Base Brig and the Charleston Air Force Base, Charleston, South Carolina, on Friday, November 6, 1998. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1984, military confinement facilities, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, D.C. 20042–0001, telephone (202) 761–1448.

Dated: October 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29060 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 18 November 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201.

DATES: 19 November 1998, (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S.

Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: 26 October 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29053 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATE: 10 November 1998 (800 a.m. to 1600 p.m.)

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald Culp, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: 26 October 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29054 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 3 November 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: 26 October 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29055 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: On September 30 1998, the Defense Intelligence Agency published an announcement (63 FR 52245) for a closed meeting on 13 October 1998. This meeting was cancelled due to the lack of an approved DOD Budget.

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

Dated: October 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29056 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: On September 30, 1998, the Defense Intelligence Agency published an announcement (63 FR 52245) for a closed meeting on 15 October 1998. This meeting was cancelled due to the lack of an approved DOD Budget.

ADDRESSES: The Defense Intelligence Agency, 7400 Defense Pentagon, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

Dated: October 26, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–29057 Filed 10–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 30, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 26, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for New Grants Under Bilingual Education: Program Development and Implementation Grants Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses; 300 Burden Hours: 24,000
Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies, institutions of higher education, community-based organizations, and state educational agencies. The respondents are required to submit this application to receive a grant.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for Grants Under Bilingual Education: State Grant Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 59; Burden Hours: 1,770.
Abstract: This information will be used to make funding decisions of the State Grant Program. The respondents are SEAs charged with the authority to provide technical assistance to LEAs within the state and to collect data on LEP population.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for Grants Under Bilingual Education: Systemwide Improvement Grants Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 200; Burden Hours: 24,000.
Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for New Grants Under Foreign Language Assistance Program for Local Education Agencies.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 150; Burden Hours: 12,000.
Abstract: The Department needs and uses this information to make grants. The respondents are local education agencies. The respondents are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for Grants Under Foreign Language Assistance Program for State Education Agencies.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 50; Burden Hours: 4,000.
Abstract: The Department needs and uses this information to make grants. The respondents are State education agencies and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for Grants Under Bilingual Education Program Enhancement Grants.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 300; Burden Hours: 24,000.
Abstract: The purpose of this program is to provide grants to carry out highly focused, innovative, locally designed projects to expand or enhance existing bilingual education or special alternative instructional programs for limited English proficient (LEP) students.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for Grants Under Bilingual Education: Teachers and Personnel Grants Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 200; Burden Hours: 24,000.
Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies, State educational agencies and institutions of higher education and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Application for Grants Under Bilingual Education: Career Ladder Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 200; Burden Hours: 24,000.
Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies, State educational agencies and institutions of higher education and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–29087 Filed 10–29–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Teleconference and Partially Closed Meeting.

SUMMARY: This notice set forth the schedule and a proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 16, 1998; November 19–21, 1998.

TIME: November 16—Executive Committee 11:00 a.m.–12:00 p.m. (closed), 12:00–1:00 p.m. (open); November 19, Design and Methodology Committee 9:00–11:00 a.m., (open); Subject Area Committee #2, 9:00–11:00 a.m., (open). November 20—Full Board, 8:30–10:30 a.m., (open); Subject Area Committee #1, 10:30 a.m.–12:30 p.m., (open); Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m., (open); Achievement Levels Committee, 10:30–11:15 a.m., (open), 11:15–11:45 a.m. (closed), 11:45 a.m.–12:30 p.m., (open). Full Board, 12:30–4:00 p.m., (open). November 21—Full Board 9:00 a.m. until adjournment, approximately 12:00 Noon, (open).

LOCATION: Hotel Washington, Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capital Street, NW, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103-382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On Monday, November 16, the Executive Committee will hold a partially closed teleconference meeting. From 11:00 a.m. to 12:00 p.m., the Committe will meet in closed session to discuss the development of cost estimates for current contract initiatives for NAEP and future contract initiatives. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in an open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C. Between 12:00 and 1:00 p.m. the meeting will be open to the public when the Committee will discuss the NAEP assessment schedule for the year 2000 and hear updates on the Voluntary National Tests program and NAEP reauthorization.

On Thursday, November 19, there will be meetings of two committees of the Governing board. The Design and methodology Committee will meet in open sessions from 9:00–11:00 a.m. The Committee will be considering information related to accommodations for testing students with language and/or physical disabilities. Also, the Committee will receive a report on technical information related to the 1999 NAEP field test. Subject Area Committee #2 will meet in open session from 9:00–11:00 a.m. The Committee will discuss development issues for the proposed year 2000 NAEP science and math assessments. In addition, the Committee will be briefed on voluntary National Tests matters such as

calculator use, item development, and test development timelines.

On Friday, November 20, the Full board will convene in open session at 8:30 a.m. The agenda for this session of the full board meeting includes approval of the agenda, the swearing-in of new Board members and remarks by the Secretary of Education, and a report from the Executive Director. This session will conclude with an update on NAEP and a presentation on NAEP Cooperative Agreements with the Educational Testing Service and Westat.

Between 10:30 a.m. and 12:30 p.m., there will be open meetings of the Subject Area Committee #1, and the Reporting and Dissemination Committee, and a partially closed meeting of the Achievement Levels Committee.

Subject Areas Committee #1 will discuss development issues for the proposed year 2000 NAEP grad 4 reading assessment. In addition, the Committee will be briefed on voluntary National Tests matters such as readability findings, item development, and test development timelines. The Reporting and Dissemination Committee will consider the release plan for the 1998 NAEP mathematics report and the schedule for the release of future NAEP reports. Other agenda items include an update on the consideration of reporting data for groups of private schools; review of NAGB policy on reporting and dissemination; and Voluntary National Tests reporting and test utilization guidelines.

The Achievement Levels Committee will meet in closed session from 11:15–11:45 a.m., to discuss results of the civics and writing pilot testing. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

During the open portion of the Achievement Levels Committee meeting, from 10:30 to 11:15 a.m., there will be discussions of the National Academy of Sciences Evaluation of Achievement Levels, and a discussion on the results of the civics and writing pilot testing. From 11:45 a.m. until 12:30 p.m., the Committee will consider issues related to linking NAEP and the Voluntary National Tests.

The full board will reconvene at 12:30 p.m. The agenda items during this period include reflections on the 10 Year Anniversary Conference, and reports from the national Academy of Sciences: Evaluation of the Voluntary National Tests; High Stakes Testing for Tracking, Promotion, and Graduation, and the National Academy of Sciences, NAEP Evaluation. Also, there will be a report on AllStates 2000. The Board will recess at 4:00 p.m.

On Saturday, November 21, the full Board will meet in open session from 9:00 a.m. until adjournment, approximately 12:00 noon. During this session the Board will hear updates on the Voluntary National Tests project and the Allstate 2000 Project. The final agenda item is the presentation of reports from the various Board committee meetings.

A summary of the activities of the closed and partially closed sessions and other related matters which are informative to the public and consistent with the policy of the section 5 U.S.C. 552b(c), will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–29086 Filed 10–29–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Sunday, November 15, 1998:

12:00 p.m.—Membership Replacement Review

Monday, November 16, 1998:

8:30 a.m.:—Membership Replacement Review Continued

6:30 p.m.–7:00 p.m.: Public Comment Session

7:00 p.m.–9:00 p.m.: Individual Subcommittee Meetings

Tuesday, November 17, 1998: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Adam's Mark Hotel, 1200 Hampton Street, Columbia, South Carolina.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Sunday, November 15, 1998

12:00 p.m. Review and select candidates for 1999 membership

Monday, November 16, 1998

8:30 a.m. Continued membership replacement review

6:30 p.m. Public comment session (5-minute rule)

7:00 p.m. Issues-based subcommittee meetings

9:00 p.m. Adjourn

Tuesday, November 17, 1998

8:30 a.m. Approval of minutes, agency updates (~ 15 minutes)

Public comment session (5-minute rule) (~ 10 minutes)

Nuclear materials management subcommittee (~ 30 minutes)

Risk management & future use subcommittee report (~ 30 minutes)

Environmental remediation and waste management subcommittee report (~ 2 hours)

12:00 p.m. Lunch

MOX fuel presentation (~ 30 minutes)

Dose reconstruction project update (~ 30 minutes)—tentative

Facilitator update (~ 30 minutes)

TNX tour/early warning monitoring system (~ 15 minutes)

Outreach subcommittee report (~ 15 minutes)

SEMA/decisionmaker forum participation (~ 10 minutes)

Public comment session (5-minute rule) (~ 10 minutes)

4:00 p.m. Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, November 16, 1998.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should

contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on October 22, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–29143 Filed 10–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy: AES Ironwood, Inc.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

[Docket No. FE C&E 98–08—Certification Notice—163]

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On October 5, 1998, AES Ironwood, Inc. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: AES Ironwood, Inc.

Operator: AES Ironwood, Inc.

Location: South Lebanon Township, Lebanon County, PA

Plant Configuration: Combined-cycle

Capacity: 700 megawatts, net

Fuel: Natural gas or fuel oil

Purchasing Entities: 90% to GPU Energy, 10% to Pennsylvania-Jersey-Maryland power pool.

In-Service Date: First quarter of the year 2001

Issued in Washington, D.C., October 23, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–29142 Filed 10–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: Designation of PRB Chair.

SUMMARY: This notice designates the Performance Review Board Chair for the Department of Energy.

EFFECTIVE DATE: The appointment is effective as of September 30, 1998.

Performance Review Board Chair.

David L. Hamer, Department of Energy.

Issued in Washington, DC, October 19, 1998.

Richard T. Farrell,

Director of Human Resources and Administration.

[FR Doc. 98–29144 Filed 10–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1998.

ACHARYA, SARBESWAR NMN
ACKERLY, LAWRENCE R
ADAMSON, DANIEL M.
ALCOCK, ROBERT M.
ALVAREZ, ROBERT NMN
ANDERSEN, ARTHUR T
ANDERSON, PHYLLIS L.
ANDERSON, BROOKE D
ARMSTRONG, M BRENT
ARTHUR III, WILLIAM JOHN
BACA, MARK C
BACA, FRANK A
BAJURA, RITA A
BAKER, KENNETH E
BAMBERGER, CRAIG S
BARBER, ROBERT W
BARKER JR., WILLIAM L
BARRETT, LAKE H.
BAUER, LINDA K
BECKETT, THOMAS H
BEECY, DAVID
BENEDICT, GEORGE W
BERGHOLZ JR., WARREN E
BERKOVITZ, DAN M
BERNARD, PETER A
BERUBE, RAYMOND P
BIELAN, DOUGLAS J
BLACK, RICHARD L
BLACKWOOD, EDWARD B.
BLADOW, JOEL K.
BORCHARDT, CHARLES A
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BORNHOFT JR., BUDD B
BOSTOCK, JUDITH L
BOWMAN, GERALD C.
BOYD, GERALD G
BRADLEY JR., THERON M
BRECHBILL, SUSAN R
BRENDLINGER, TERRY L.
BREZNAY, GEORGE B
BRICE, JAMES F
BRODMAN, JOHN R
BROIDO, MICHELLE S
BROWN JR., CHARLES H
BROWN, RICHARD W.
BROWN, FREDERICK R
BRUSH, PETER N.
BURROWS, CHARLES W
CANTER, HOWARD R.
CARABETTA, RALPH A
CARDINALI, HENRY A
CARLSON, LYNDA T
CARLSON, KATHLEEN ANN
CARLSON, JOHN T.
CARUSO, GUY F.
CASTELLI, BRIAN T.
CHRISTENSEN, WILLIAM J

CHRISTOPHER, ROBERT K.
CHUN, SUN W
CLAFLIN, ALAN B
CLARK, JOHN R
CLAUSEN, MAX JON
COMBS, MARSHALL O
COOK, JOHN S
CRANDALL, DAVID H
CRAWFORD, TIMOTHY S
CROSS, CLAUDIA A.
CROWE, RICHARD C.
CUMESTY, EDWARD G
CURTIS, JAMES H
CYGELMAN, ANDRE I
CZAJKOWSKI, ANTHONY F.
DALTON, HENRY F.
DARUGH, DAVID G
DAVIES, NELIA A
DAVIS, JAMES T
DECKER, JAMES F
DEGRASSE JR., ROBERT W.
DEHANAS, THOMAS W
DEHMER, PATRICIA M
DEIHL, MICHAEL A.
DEMPSEY, ROBERT D
DENNISON, WILLIAM J
DER, VICTOR K
DEVER, GERTRUDE L.
DIAZ JR., ROMULO L
DIFIGLIO, CARMEN NMN
DIRKS, TIMOTHY M
DIVONE, LOUIS V
DIXON, ROBERT K
DOHERTY, DONALD P
DOMAGALA, MARTIN J
DOOLEY III, GEORGE J.
DURNAN, DENIS D
DYER, J. RUSSELL
EDMONDSON, JOHN J
EGGER, MARY H
ENGEL, WALTER P
ESVELT, TERENCE G
EVANS, THOMAS W
FALLE, J. GARY
FELDT, ELISABETH G.
FIDLER, SHELLEY N
FIORE, JOSEPH N
FIORE, JAMES J
FITZGERALD JR., JOSEPH E
FITZGERALD, CHERYL P.
FOLKER, ROBERT D
FORD, JAMES L
FORRISTER, DERRICK L.
FOWLER, JENNIFER JOHNSON
FRANKLIN, JOHN R
FRAZIER, MARVIN E
FREI, MARK W
FRIEDMAN, GREGORY H
FURIGA, RICHARD D
FYGI, ERIC J
GARSON, HENRY K
GEBUS, GEORGE R
GEIDL, JOHN C
GIBSON JR., WILLIAM C
GIBSON, JUDITH D.
GILBERTSON, MARK A.
GINSBERG, MARK B
GLASS, RICHARD E
GOLAN, PAUL M.
GOLDENBERG, RALPH D
GOLDENBERG, NEAL NMN
GOLDMAN, DAVID TOBIAS
GOLDSMITH, ROBERT NMN
GOLDWYN, DAVID L.
GOLLOMP, LAWRENCE A
GOODRUM, WILLIAM S
GOTTEMOELLER, ROSE E.
GOTTLIEB, PAUL A
GREENWOOD, JOHNNIE D
GROSS, THOMAS J
GRUENSPECHT, HOWARD K
GUIDICE, CARL W
GUNN JR., MARVIN E
GURULE, DAVID A
HABERMAN, NORTON NMN
HACSKAYLO, MICHAEL S.
HALL, JAMES C
HAMER JR, DAVID L
HANSEN, CHARLES A
HARDIN, MICHAEL G
HARDWICK JR., RAYMOND J.
HARRIS, SKILA S
HARTMAN, JAMES K
HASPEL, ABRAHAM E.
HAWKINS, FRANCIS C
HEATH, CHARLES C
HEENAN, THOMAS F
HEINKEL, JOAN E
HELMS, K DEAN
HENDERSON, LYNWOOD H
HENSLEY JR., WILLIE F
HEUSSER, ROGER K
HICKOK, STEVEN G
HIRAHARA, JAMES S
HOFFMAN, ALLAN R.
HOLBROOK, PHILLIP L
HOLGATE, LAURA
HOLMES, NANCY H
HOLSTEIN JR., ELWOOD NMN
HOOPER, MICHAEL K
HOPF, RICHARD H
HOPKINS, T. J.
HORTON, DONALD G.
HOWES, WALTER S.
HUGHES, JEFFREY L.
HUIZENGA, DAVID G.
HUTZLER, MARY JEAN
INADOMI, LEEANN R.
INGE JR., EDWIN F
INLOW, RUSH O
IZELL, KATHY D
JAFFE, HAROLD
JHIRAD, DAVID J.
JOHANSEN, JUDITH A.
JOHNSON, OWEN B
JOHNSON, GERALD W
JOHNSON, FREDERICK M
JOHNSON, MILTON D
JOHNSTON, MARC
JONES, DAVID A
JONES, C. RICK
JOSEPH, ANTIONETTE GRAYSO
JUCKETT, DONALD A.
JUDGE, GEOFFREY J
KELLY, CYNTHIA C
KENDERDINE, MELANIE ANNE
KENNEDY, JOHN P
KIGHT, GENE H
KILGORE, WEBSTER C
KILPATRICK, MICHAEL A.
KINZER, JACKSON E
KLEIN, SUSAN ELAINE
KLEIN, KEITH A
KNOLLMEYER, PETER M
KNOTEK, MICHAEL L.
KONOPNICKI, THAD T.
KRIPOWICZ, ROBERT S
LANDERS, JAMES C
LANE, ANTHONY R
LASH, TERRY R.
LECLAIRE, DAVID B
LEWIS JR., WILLIAM A.
LEWIS, ROGER A.
LEWIS JR., HOWARD E
LIEN, STEPHEN C.T.
LIGHTNER, RALPH G
LIVINGSTON-BEHAN, ELLEN
LOWE, DAVID C
LOWE, OWEN W.
LYLE, JERRY L.
MAHALEY, JOSEPH S.
MALOSH, GEORGE J
MANGENO, JAMES J
MANN, THOMAS O
MARCHESE, ANDREW R.
MARIANELLI, ROBERT S
MARLAY, ROBERT C
MAXEY, KENNETH G.
MAZUR, MARK J.
MC CALLUM, EDWARD J
MCCLARY, MICHAEL VANCE
MCCOY III, FRANK R
MCDONALD-KAUFMAN, SYLVIA
MCGUIRE, PADDY J
MICHELSEN, STEPHEN J
MILLER, CLARENCE L
MILLER, DEBORAH C
MILLHONE, JOHN P
MILNER, RONALD A
MONTOYA, ELIZABETH A
MOORER, RICHARD F
MORGAN, JEAN M
MORRIS, MARCIA L
MOSQUERA, JAMES P
MOURNIGHAN, STEPHEN D
MRAVCA, ANDREW E
MULHOLLAND, JOSEPH W
MURPHY, ALICE Q
MURPHY, ROBERT E
NEALY, CARSON L.
NEILSEN, FINN K
NELSON, DAVID B
NELSON, RODNEY R
NETTLES JR., JOHN J.
NICHOLS, CLAYTON R
NOLAN, ELIZABETH A.
NORMAN, PAUL E
NULTON, JOHN D
O'FALLON, JOHN R
OLIVER, LAWRENCE R
OLSON, GARY C
OWENDOFF, JAMES M
PARNES, SANFORD J.
PATIL, PANDIT G
PATRINOS, ARISTIDES A.
PATTON, GLORIA S
PEARSON, ORIN F.
PENRY, JUDITH M
PERIN, STEPHEN G
PETERS, FRANKLIN G
PETTENGILL, HARRY J
PETTIS, LAWRENCE A
PIPER II, LLOYD L
PODONSKY, GLENN S
POE, ROBERT W
PONCE, VICTORIA L.
POWERS, JAMES G.
POWERS, KENNETH W
PRAY, CHARLES P.
PRICE JR., ROBERT S.
PRUDOM, GERALD H.
PRZYBYLEK, CHARLES S
PUMPHREY, DAVID L
PYE, DAVID B
RABBEN, ROBERT G
REID, JAMES E
RHOADES, DANIEL R
RICHARDSON, STEVEN D.

RICHARDSON, HERBERT
ROBERSON, JESSIE M.
ROBERTS, MICHAEL
ROBERTSON, JOHN S
ROBISON, SALLY A
RODEHEAVER, THOMAS N
RODEKOHR, MARK E
RODGERS, STEPHEN J
ROHLFING, JOAN B.
ROLLOW, THOMAS A
ROONEY, JOHN M
ROSEN, SIMON PETER
ROSSELLI, ROBERT M
ROUSSO, SAMUEL NMN
RUDINS, GEORGE NMN
RUDY, GREGORY P.
RYDER, THOMAS S
SALM, PHILIP E
SAN MARTIN, ROBERT L
SATO, WALTER N
SCHMITT, CARL H
SCHMITT, EUGENE C
SCHMITT, WILLIAM A
SCHNAPP, ROBERT M
SCHNEIDER, SANDRA L
SCOTT, RANDAL S
SENA, RICHARD F
SHELOR, DWIGHT E
SHERMAN, HELEN O.
SIEBERT JR., ARLIE B
SILBERGLEID, STEVEN A
SINGER, MARVIN I
SITZER, SCOTT B
SKUBEL, STEPHEN C.
SMEDLEY, ELIZABETH E
SMITH, ALEXANDRA B
SMITH, ALAN C
SOHINKI, STEPHEN M.
SPECTOR, LEONARD S.
SPIGAL, HARVARD P
STADLER, SILAS D.
STAFFIN, ROBIN NMN
STALLMAN, ROBERT M.
STARK, RICHARD M
STELLO JR., VICTOR NMN
STEWART JR., JAKE W.
STEWART JR., FRANK M
STRAKEY JR., JOSEPH P
SULAK, STANLEY R
SUMMERVILLE, SARAH J
SUYAT, STANLEY D.
SWINK, DENISE F
SYE, LINDA G.
SYLVESTER, WILLIAM G
TABOAS, ANIBAL L
TAMURA, THOMAS T
TAVARES, ANTONIO F.
TEDROW, RICHARD T
THOMAS, IRAN L
THOMPSON, JERRY F
THROCKMORTON, RALPH R
TODD, G THOMAS
TOENYES, JERRY W
TORKOS, THOMAS M
TRYON, ARTHUR E.
TSENG, JOHN C
TURI, JAMES A
TURNER, JAMES M
TWINING, BRUCE G
VAGTS, KENNETH A
VANZANDT, VICKIE A
WAGNER, M PATRICE
WAGNER, MARY LOUISE
WAGONER, JOHN D
WAISLEY, SANDRA L.
WALDRON, ROBERT E.
WALGREN, DOUGLAS NMN
WALSH, ROBERT J
WARNICK, WALTER L
WATKINS, ANTHONY LEE
WEGNER, GERALD C
WEIGAND, GILBERT G.
WERNER, JAMES D.
WHITAKER JR., MARK B
WHITE, JAMES K
WHITEMAN, ALBERT E
WIEKER, THOMAS L
WILCYNSKI, JOHN M
WILKEN, DANIEL H.
WILLIAMS, O JAY
WILLIAMS, MARK H.
WILLIS, JOHN W
WILMOT, EDWIN L
WISENBAKER JR., WILLIAM
WOOLEY, JOHN C
WRIGHT, STEPHEN J
WYMER, NATALIE D
YUAN-SOO HOO, CAMILLE C.
ZAMORSKI, MICHAEL J

Issued in Washington, DC October 19, 1998.

Richard T. Farrell,

Director of, Human Resources and Administration.

[FR Doc. 98–29145 Filed 10–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–1–000]

Bear Swamp Generating Trust No. 1; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

October 26, 1998.

Take notice that on October 23, 1998, Bear Swamp Generating Trust No. 1 (Applicant) tendered for filing with the Federal Energy Regulatory Commission an Amendment to Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations. The application was filed in the above-referenced docket number on October 1, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 6, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29076 Filed 10–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–2–000]

Bear Swamp Generating Trust No. 2; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

October 26, 1998.

Take notice that on October 23, 1998, Bear Swamp Generating Trust No. 2 (Applicant) tendered for filing with the Federal Energy Regulatory Commission an Amendment to Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations. The application was filed in the above-referenced docket number on October 1, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 6, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29077 Filed 10–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–6–000]

Bear Swamp I LLC; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

October 26, 1998.

Take notice that on October 23, 1998, Bear Swamp I LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission an Amendment to Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations. The application was filed in the above-referenced docket number on October 1, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 6, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29079 Filed 10–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–5–000]

Bear Swamp II LLC; Notice of Amendment of Application for Commission Determination of Exempt Wholesale Generator Status

October 26, 1998.

Take notice that on October 23, 1998, Bear Swamp II LLC (Applicant) tendered for filing with the Federal Energy Regulatory Commission an Amendment to Application for Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations. The application was filed in the above-referenced docket number on October 1, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 6, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29078 Filed 10–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–000]

Mississippi River Transmission Corporation; Notice Establishing Technical Conference

October 26, 1998.

Take notice that the Commission staff will convene a technical conference as provided by the Commission order in this proceeding issued October 14, 1998.[1] The technical conference will be held on Wednesday, November 4, 1998, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Attendance will be limited to parties and staff. For additional information, please contact Jerie O'Connor at (202) 208–0459.

David P. Boergers,

Secretary.

[FR Doc. 98–29080 Filed 10–29–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Mississippi River Transmission Corporation, 85 FERC ¶ 61,049 (1998).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–5]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 19, 1998 Through October 23, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980427, Final EIS, COE, FL, Sunny Isles (North Miami) Proposed Modification to Segment of the Dade County Beach Erosion Control and Hurricane Protection Project, Dade County, FL, Due: November 30, 1998, Contact: Rudy Nyc (404) 562–5223.

EIS No. 980428, Final EIS, COE, CA, Los Angeles County Drainage Area (LACDA) Water Conservation and Supply and Santa Fe—Whittier Narrows Dams Feasibility Study, Implementation, Los Angeles County, CA, Due: November 30, 1998, Contact: Debbie Lamb (213) 452–3798.

EIS No. 980429, Final EIS, COE, NJ, Lower Cape May Meadows—Cape May Point Feasibility Study, Ecosystem Restoration, New Jersey Shore Protection Study, Cape May County, NJ, Due: November 30, 1998, Contact: Carmen G. Zappile (215) 656–6576.

EIS No. 980430, Draft EIS, DOE, CA, Sutter Power Plant Project, Operation and Maintains of a High-Voltage Electric Transmission, 500 megawatt (MW) Gas Fueled, Sutter County, CA, Due: December 14, 1998, Contact: Loreen McMahon (916) 353–4460.

EIS No. 980431, Draft EIS, DOA, VA, Buena Vista Watershed Plan, Multiple Works Improvements, Watershed Protection and Flood Prevention, City of Buena Vista, Rockbridge County, VA, Due: December 14, 1998, Contact: M. Denise Doetzer (804) 287–1690.

EIS No. 980432, Legislative Final EIS, COE, WA, Howard A. Hanson Dam (HHD Additional Water Storage (AWS) Phase I Project, Construction and Operation, Green River Basin Pierce and King Counties, WA, Due: November 30, 1998, Contact: Kris Loll (206) 764–4470.

EIS No. 980433, Draft Supplement, NPS, CA, Backcounty and Wilderness Management Plan, Additional Information, General Management Plan Amendment, Joshua Tree National Park, Riverside and San Bernardino Counties, CA, Due: December 31, 1998, Contact: Alan Schmierer (415) 427–1441.

EIS No. 980434, Draft EIS, BLM, AZ, Ray Land Exchange/Plan Amendment, Implementation, Exchange of Federal Lands for Public Lands, Pinal, Gila and Mohave Counties, AZ, Due: January 28, 1999, Contact: Shelia McFarlin (602) 417–9568.

EIS No. 980435, Preliminary Draft EIS, USA, GA, U.S. Army/Fort Benning and The Consolidated Government of Columbus Proposed Land Exchange, Muscogee and Chattahoochee Counties, GA, Due: December 14, 1998, Contact: John Brent (706) 545–4766.

EIS No. 980436, Final EIS, DOA, OK, Double Creek Watershed Plan, Implementation, Watershed Protection and Flood Prevention, National Economic Development (NED), Town of Ramona, Washington and Osage Counties, OK, Due: November 30, 1998, Contact: Ronnie L. Clark (405) 742–1223.

EIS No. 980437, Draft Supplement, EPA, CA, International Wastewater Treatment Plant and South Bay Ocean Outfall, Updated Information, Interim Operation, Tijuana River, San Diego, CA, Contact: Elizabeth Borowiec (415) 744–1165. U.S. EPA has applied to the Council on Environmental Quality (CEQ) under Section 1502(c)(4) of the CEQ Regulations for the Approval of Alternative Procedures. EPA has proposed that the above EIS have a 30-day Review Period; after the closing of this Time Period a Record of Decision may be issued. A Notice of the CEQ's decision will be published in the next **Federal Register**, with the process to be followed and the date comments are Due to EPA.

Amended Notices

EIS No. 980206, Draft EIS, BIA, CA, Programmatic—Cabazon Resource Recovery Park Section 6 General Plan, Implementation, Approval of Master Lease and NPDES Permit, Mecca, CA , Due: July 06, 1998, Contact: Donald R. Sutherland (202) 208–4791. Published FR 06–05–98.

Officially Withdrawn by the Preparing Agency.

Dated: October 27, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–29175 Filed 10–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6182–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104—Announcement of Proposal Deadline for the Competition for the 1999 National Brownfields Assessment Demonstration Pilots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposal deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment Pilots on October 30, 1998. The brownfields assessment pilots (each funded up to $200,000 over two years) test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated environmental cleanup and redevelopment efforts at the federal, state, and local levels. EPA expects to select up to 100 additional National brownfields assessment pilots by May 1999. Applications will be accepted on a ''rolling submissions'' schedule. The deadlines for new applications for the 1999 assessment pilots are December 11, 1998, and March 22, 1999. Applications postmarked after December 11, 1998, will be considered in the second round of competition. Previously unsuccessful applicants are advised that they must revise and resubmit their applications.

The National brownfields assessment pilots are administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the newly revised application booklet The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Assessment Demonstration Pilots (October 1998).

DATES: This action is effective as of October 30, 1998, and expires on March 22, 1999. All proposals must be postmarked or sent to EPA via registered or tracked mail by the expiration dates cited above. Applications postmarked after December 11, 1998, will be considered in the second round of competition.

ADDRESSES: Application booklets can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810; Outside Washington, DC Metro at 1–800–424–9346; TDD for the Hearing Impaired at 1–800–553–7672.

Copies of the Booklet are available via the Internet: http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: As a part of the Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower States, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup and promote the sustainable reuse of brownfields. EPA has awarded cooperative agreements to States, cities, towns, counties and Tribes for demonstration pilots that test brownfields assessment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private efforts at the Federal, State and local levels. To date, the Agency has funded 226 Brownfields Assessment Pilots. Of those pilots, 169 are National Pilots selected under criteria developed by EPA Headquarters and 57 are Regional Pilots selected by EPA Regions under criteria developed by their offices.

EPA's goal is to select a broad array of assessment pilots that will serve as models for other communities across the nation. EPA seeks to identify applications that demonstrate the integration or linking of brownfields assessment pilots with other federal, state, tribal, and local sustainable development, community revitalization, and pollution prevention programs. Special consideration will be given to Empowerment Zones and Enterprise Communities (EZ/ECs), communities with populations of under 100,000, and federally recognized Indian tribes. These pilots focus on EPA's primary mission—protecting human health and the environment. However, it is an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Interagency Working Group on Brownfields, and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

Funding for the brownfields assessment pilots is authorized under section 104(d)(1) of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1). States (including U.S. Territories), political subdivisions (including cities, towns, counties), and federally recognized Indian Tribes are eligible to apply. EPA welcomes and encourages applications from coalitions of such entities, but a single eligible entity must be identified as the legal recipient. Cooperative agreement funds will be awarded only to a state, to an officially recognized political subdivision of a state, or to a federally recognized Indian tribe. For non-state applicants, please include a statement verifying that your entity has been authorized by the state to exercise governmental powers.

Through a brownfields cooperative agreement, EPA authorizes an eligible state, political subdivision, Territory, or Indian Tribe to undertake activities under CERCLA section 104. All restrictions on EPA's use of funding cited in CERCLA also apply to brownfields assessment pilot cooperative agreement recipients.

The proposal evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below:

1. Problem Statement and Needs Assessment (4 points out of 20)
   —Effect of Brownfields on your Community or Communities
   —Value Added by Federal Support
2. Community-Based Planning and Involvement (6 points out of 20)
   —Existing Local Commitment
   —Community Involvement Plan
   —Environmental Justice Plan
3. Implementation Planning (6 points out of 20)
   —Government Support
   —Site Selection and Environmental Site Assessment Plan
   —Reuse Planning and Proposed Cleanup Funding Mechanisms
   —Flow of Ownership Plan
4. Long-Term Benefits and Sustainability (4 points out of 20)
   —Long-Term Benefits
   —Sustainable Reuse
   —Measures of Success

Dated : October 22, 1998.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 98–29159 Filed 10–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6182–6]

National Environmental Justice Advisory Council Notification of Meeting and Public Comment Period(s); Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC) along with the subcommittees will meet on the dates and times described below. All times noted are Central Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The NEJAC and subcommittee meetings will take place at the Baton Rouge Hilton, 5500 Hilton Avenue, Baton Rouge, Louisiana 70808, phone: 504/924–5000. The meeting dates are as follows: December 7, 1998 through December 10, 1998.

Registration for the NEJAC meeting will begin on Monday, December 7, 1998 at 5 p.m. Two public comment periods have been scheduled for Monday, December 7, 1998 from 7 p.m. to 9 p.m., and on Wednesday, December 9, 1998 from 7 p.m. to 9 p.m. The full NEJAC will convene Tuesday, December 8, 1998 from 9 a.m. to 5:30 p.m., and on Thursday, December 10, 1998 from 9 a.m. to 5 p.m. Business will include follow-up on pending items from the previous NEJAC meeting, discussion of activities related to the NEJAC Assessment Workgroup, and introduction and discussion of new business items. All subcommittees of the NEJAC, including the new Air and Water Subcommittee, will meet on Wednesday, December 9, 1998 from 8:30 a.m. to 5 p.m. Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee and Federal Official and Telephone Number

Enforcement
Ms. Sherry Milan—202/564–2619
Health & Research
Mr. Lawrence Martin—202/564–6497
Mr. Chen Wen—202/260–4109
International
Ms. Wendy Graham—202/564–6602
Indigenous Peoples
Mr. Danny Gogal—202/564–2576
Public Participation
Ms. Renee Goins—202/564–2598
Waste/Facility Siting
Mr. Kent Benjamin—202/260–2822
Air & Water
Mr. Will Wilson—202/260–5574
Ms. Alice Walker—202/260–1919

Members of the public who wish to participate in one of the public comment periods should register to do so by December 2, 1998. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. If you wish to submit written comments of any length (at least 50 copies), they should also be received by December 2, 1998. Comments received after that date will be provided to the Council as logistics allow. Correspondence concerning registration should be sent to Tama Clare of Tetra Tech Environmental Management, Inc. at: 1593 Spring Hill Road, Suite 300, Vienna, VA 221882, phone (703) 287–8808 or fax (703) 287–8843. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 888/335–4299. For on-line registration, you may visit the Internet site: http://www.ttemi.com/nejac/register.html.

Dated: October 23, 1998.

Robert J. Knox,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 98–29158 Filed 10–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6182–8]

Notice of Availability: The Office of Solid Waste (OSW) is Announcing the Availability of a New Draft Guidance Document Entitled Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is providing notice that the following draft guidance document: Human Health Risk

Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft) is available and that a 60-day public review period of the document will begin today. In addition, this document will be undergoing an external peer review which will be organized and conducted by EPA's contractor, Tech Law. Information regarding the peer review process will be published in a **Federal Register** notice at a later date.

This EPA document will serve to update and replace the existing draft guidance entitled: ''Guidance for Performing Screening Level Risk Analyses at Combustion Facilities Burning Hazardous Wastes' (April 15, 1994 draft). This updated document contains the Office of Solid Waste's recommended approach for conducting site-specific risk assessments on RCRA hazardous waste combustors. The goal of this guidance document is to develop an understanding of the potential human health risks associated with the emissions from hazardous waste combustors. This guidance document includes specific parameters, pathways and algorithms to evaluate both direct and indirect risks. OSW intends to use the results of the risk assessments to provide a basis for risk management decisions in hazardous waste combustor permitting and to ensure that the permits are protective of human health and the environment.

All public comments should be received by December 29, 1998 to be considered by the Agency. The public comments will be for the Agency's evaluation only and will not be part of the peer review process. All comments received from the public and the peer review will be considered when the Agency finalizes this document.

DATES: Public comments on the document Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities should be received by the docket no later than December 29, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific questions on implementation of the methods described in this document, please contact your RCRA regulatory authority; for other questions contact Karen Pollard, Office of Solid Waste, 5307W U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; phone: (703) 308–3948; e-mail: Pollard.Karen@EPA mail.EPA.gov.

ADDRESSES: Commenters must send the original and two copies of their comments referencing docket number F–98–HHRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Comments submitted electronically comments should be identified by the docket number F–98–HHRA–FFFFF and submitted to: *RCRA-docket@epamail.epa.gov.* Submit electronic comments in an ASCII file and avoid the use of special characters and any form of encryption. EPA's Office of Solid Waste (OSW) also accepts data on disks in Wordperfect 6.1 file format.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street SW, Washington, DC 20460.

Public comment and supporting materials will be made available for viewing from 9 a.m. to 4 p.m., Monday through Friday (except Federal holidays) in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and notice are available electronically. See the ''Supplementary Information'' section for information on accessing it.

SUPPLEMENTARY INFORMATION: For paper or CD–ROM copies of the guidance document, please contact the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460, (703) 603–9230. The document is a three volume set, the document numbers are EPA 530–D–98–001A; 530–D–98–001B; and 530–D–98–001C. Copies of this document may also be obtained from the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. The document is also available in electronic format on the world wide web at: *http://www.epa.gov/epaoswer/hazwaste/combust/riskhtm*.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII(TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign.

Dated: October 21, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–29157 Filed 10–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6172–1]

Issuance of NPDES General Permits for Wastewater Lagoon Systems Located On Indian Reservations in MT, ND, SD, and UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit decision—issuance of NPDES general permits.

SUMMARY: Region VIII of EPA is hereby giving notice of its issuance of National Pollutant Discharge Elimination System (NPDES) general permits for wastewater lagoon systems located on Indian Reservations in the States of MT, ND, SD, and UT, and treating primarily domestic wastewater. The use of wastewater lagoon systems is the most common method of treating municipal wastewater and domestic wastewater from isolated housing developments, schools, etc., on the Indian Reservations in those states. Region VIII will be using general permits instead of individual permits for permitting the discharges from many of those facilities in order to reduce the Region's administrative burden of issuing separate individual permits. The administrative burden for the regulated sources is expected to be about the same under the general permits as with individual permits, but it will be much quicker to obtain permit coverage with general permits than with individual permits. The discharge

requirements would be essentially the same with an individual permit or under the general permit. A separate general permit will cover the aforementioned facilities within the exterior boundaries of a single reservation.

DATES: These general permits shall be effective on December 1, 1998, and expire at midnight on September 30, 2003.

ADDRESSES: The public record is located at EPA Region 8, and is available upon written request. Requests for copies of the public record, including a complete copy of response to comments and the general permit should be addressed to William Kennedy, STATE ASSISTANCE PROGRAM (8P–SA); ATTENTION: NPDES PERMITS; U.S. EPA, REGION VIII; 999 18TH STREET, SUITE 500; DENVER, CO 80202–2466. Copies of the permit and Fact Sheet may also be downloaded from the EPA Region VIII web page at hhtp://www.epa.gov/region08/html/npdes/lagoons.html.

FOR FURTHER INFORMATION CONTACT: Questions regarding the specific permit requirements may be directed to Bruce Kent, telephone (303) 312–6133.

SUPPLEMENTARY INFORMATION: General permits will be issued for discharges from wastewater lagoon systems located on the following Indian Reservations:

Permit No.	Indian reservation
Montana:	
MTG581###	Blackfeet Indian Reservation;
MTG582###	Crow Indian Reservation;
MTG583###	Flathead Indian Reservation;
MTG584###	Fort Belknap Indian Reservation;
MTG585###	Fort Peck Indian Reservation;
MTG586###	Northern Cheyenne Indian Reservation; and,
MTG587###	Rocky Boy's Indian Reservation.
North Dakota:	
NDG581###	Fort Berthold Indian Reservation;
NDG582###	Fort Totten Indian Reservation—Also known as Devils Lake Indian Reservation;
NDG583###	Standing Rock Indian Reservation—Includes the entire Reservation, which is located in both North Dakota and South Dakota; and,
NDG584###	Turtle Mountain Indian Reservation.
South Dakota:	
SDG581###	Cheyenne River Indian Reservation;
SDG582###	Crow Creek Indian Reservation;
SDG583###	Flandreau Indian Reservation;
SDG584###	Lower Brule Indian Reservation;
SDG585###	Pine Ridge Indian Reservation—Includes the entire Reservation, which is located in both South Dakota and Nebraska; and,
SDG586###	Rosebud Indian Reservation.
Utah:	
UTG581###	Northern Shoshoni Indian Reservation;
UTG582###	Paiute Indian Reservations—several very small reservations, including Cedar City, Indian Peaks, Kanosh, Koosharem, and Shivwits, located in the southwest quarter of Utah;
UTG583###	Skull Valley Indian Reservation; and,
UTG584###	Uintah and Ouray Indian Reservation.

General permits are not being issued for the portions of the Navajo Indian Reservation and the Goshutes Indian Reservation in Utah since the permitting activities for these reservations are done by Region IX of EPA. Also, general permits are not being issued for the Southern Ute Indian Reservation located in the State of Colorado and the Ute Mountain Indian Reservation located in the States of Colorado, New Mexico, and Utah because of water quality concerns in the San Juan River Basin portion of the Colorado River Basin. Because of comments received, a general permit will not be issued on the Wind River Indian Reservation in Wyoming.

With the exception of the general permit for the Flathead Indian Reservation, coverage under the general permits will be limited to lagoon systems treating primarily domestic wastewater and will include the following three categories: (1) lagoons where no permission is required before starting to discharge; (2) permission is required before starting to discharge; and (3) the lagoon system is required to have no discharge except in accordance with the bypass provisions of the permit. Coverage under the general permit for the Flathead Indian Reservation coverage is limited to category 3 lagoon systems that are required to have no discharge except in accordance with the bypass provisions of the permit. The limited coverage is a condition of certification by the Confederated Salish and Kootenai Tribes of the Flathead Nation. The following facilities on the Flathead Indian Reservation will not be eligible for coverage under the general permit: Charlo Water and Sewer District (MT–0022551), Town of Hot Springs (MT–0020591), City of Polson (MT–0020559), City of Ronan (MT–0021474), Town of St. Ignatius (MT–0020524), Salish & Kootenai Housing Authority-St. Ignatius Southside (MT–0029017), Montana Department of Fish Wildlife and Parks-Jocko Fish Hatchery (no permit), and SKHA-Woodcock Homesites (no permit). The effluent limitations for lagoons coming under categories 1 and 2 are based on the Federal Secondary Treatment Regulation (40 CFR part 133) and best professional judgement (BPJ). There are provisions in the general permits for adjusting the effluent limitations on total suspended solids (TSS) and pH in accordance with the provisions of the Secondary Treatment Regulation. If more stringent and/or additional effluent limitations are considered necessary to comply with applicable water quality standards, etc., those limitations may be imposed by written notification to the permittee. Lagoon systems under category 3 are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in all

permits. Based on comments received, monitoring requirements for category 3 facilities were increased to three times per week during the first week of discharge and once per week thereafter. If the discharge lasts less than one week in duration, three samples must be collected, i.e. beginning, middle, and end of discharge.

With the exception of the Flathead Indian Reservation and the Fort Peck Indian Reservation, where the Tribes have Clean Water Act section 401(a)(1) certification authority, EPA has certified that the permit complies with the applicable provisions of the Clean Water Act so long as the permittees comply with all permit conditions. The permits will be issued for a period of five years, with the permit effective date of December 1, 1998 and an expiration date of September 30, 2003.

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA): After review of the facts present in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b) that these general permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 20, 1998.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 98–29160 Filed 10–29–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 9:51 a.m. on Tuesday, October 27, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's liquidation, corporate, supervisory and administrative enforcement activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Julie Williams (Acting Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)),

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: October 27, 1998.

Federal Deposit Insurance Corporation

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–29260 Filed 10–28–98; 11:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–011572–003.

Title: Colombia Independent Carrier Agreement.

Parties: Frontier Liner Services, King Ocean de Colombia, Seaboard Marine Ltd.

Synopsis: The proposed amendment would add the Pacific Coast of Colombia to the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 26, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–29083 Filed 10–29–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 4, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed 1999 Private Sector Adjustment Factor.

2. Cost of Federal Reserve notes in 1999.

Discussion Agenda:

3. Proposed 1999 fee schedules for priced services.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 28, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29257 Filed 10–28–98; 11:09 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 4, 1998, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the final design, budget, and construction activities for a Federal Reserve Bank's building project.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 28, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29258 Filed 10–28–98; 11:09 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (EST) November 9, 1998.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 13, 1998, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

''Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Staff''

''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Abandonment Policies of the Federal Retirement Thrift Investment Board''

''Pension and Welfare Benefits Administration Data Security Vulnerability Study at the United States Department of Agriculture, National Finance Center''

''Pension and Welfare Benefits Administration Year 2000 Program Analysis of the Thrift Savings Plan at the Federal Retirement Thrift Investment Board and the U.S. Department of Agriculture, National Finance Center''

''Pension and Welfare Benefits Administration Detailed Analysis of Thrift Savings Plan Accounts for Valid Social Security Numbers''

4. Review of status of audit recommendations.
5. Labor Department audit briefing.
6. Quarterly investment policy review.
7. Approval of criteria for selection of S and I Fund managers.
8. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

DATE: October 27, 1998.

John J. O'Meara,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 98–29183 Filed 10–27–98; 4:41 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Transaction No.	ET req status	Party name
28–SEP–98	19984720	G	Shorewood Packaging Corporation.
		G	Queens Group, Inc.
		G	Queens Group, Inc.
	19984726	G	Meridian Diagnostics, Inc.
		G	Fresenius A.G.
		G	Gull Laboratories, Inc.
	19984729	G	Windward Capital Associates, L.P.
		G	Fleming Companies, Inc.
		G	Fleming Companies, Inc.
	19984733	G	Mead Corporation (The).
		G	Louisiana-Pacific Corporation.
		G	Creative Point, Inc.
	19984735	G	Petroleos de Venezuela, S.A.
		G	Amerada Hess Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	Hess Oil Virgin Islands Corp.
	19984736	G	Amerada Hess Corporation.
		G	Amerada Hess Corporation.
		G	Hess Oil Virgin Islands Corp.
	19984737	G	Hanover Compressor Company.
		G	Eureka Energy Systems, Inc.
		G	Eureka Energy Systems, Inc.
	19984738	G	Chancellor Media Corporation.
		G	BCI Growth III, L.P.
		G	The Primedia Broadcast Group.
	19984749	G	Tribune Company.
		G	Jon S. Kelly.
		G	Kelly Television Co.
	19984751	G	Johnson & Johnson.
		G	BioCryst Pharmaceuticals, Inc.
		G	BioCryst Pharmaceuticals, Inc.
	19984755	G	Meredith Corporation.
		G	Tribune Company.
		G	WGNX Inc.
	19984759	G	CHB Capital Partners, L.P.
		G	Ha-Marque Fabricators, Inc.
		G	Ha-Marque Fabricators, Inc.
	19984763	G	Ford Motor Company.
		G	Jimmy C. Payton.
		G	Payton-Wright Ford Sales, Inc.
29–SEP–98	19984296	G	Reilly Family Limited Partnership.
		G	Outdoor Communications, Inc.
		G	Outdoor Communications, Inc.
	19984350	G	Dairy Farmers of America.
		G	California Gold Dairy Products.
		G	California Gold Dairy Products.
	19984388	G	Stryker Corporation.
		G	Pfizer Inc.
		G	Howmedica Worldwide Business.
	19884531	G	General Electric Company.
		G	Airplanes Limited.
		G	Airplanes Limited.
	19984546	G	Park-Ohio Holdings Corp.
		G	C. Charles Watterson.
		G	Charken Company, Inc.
	19984547	G	Park-Ohio Holdings, Corp.
		G	Kenneth P. Watterson.
		G	Charken Company, Inc.
	19984579	G	Genstar Capital Partners II, L.P.
		G	Union Pacific Corporation.
		G	Skyway Freight Systems, Inc.
	19984621	G	Hanson PLC.
		G	Condux Corporation.
		G	Condux Corporation.
	19984642	G	Gibraltar Steel Corporation.
		G	Anthony & Frances Fortuna.
		G	Rock River Heat Treating Company.
		G	Harbor Metal Treating Co.
		G	Harbor Metal Treating of Indiana, Inc.
	19984643	G	Tele-Communications, Inc.
		G	Cable TV Fund 14–A, Ltd.
		G	Cable TV Fund 14–A, Ltd.
	19984675	G	GS Capital Partners II, L.P.
		G	Bechtel Group, Inc.
		G	East Syracuse Generating Company, L.P.
	19984677	G	GS Capital Partners II, L.P.
		G	PG&E Corporation.
		G	East Syracuse Generating Company, L.P.
	19984709	G	Cedar Creek Partners LLC.
		G	Netcom, Inc.
		G	Netcom, Inc.
	19984717	G	Cogeneration Corporation of America.
		G	Northern States Power Company.
		G	Oklahoma Loan Acquisition Corporation.
	19984718	G	Amedisys, Inc.
		G	Columbia/HCA Healthcare Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	Crestwood Healthcare, L.P.
		G	Galen Hospital Corporation of Texas, Inc.
		G	and 28 other subsidiaries.
		G	Montgomery Regional Hospital, Inc.
		G	Selma Medical Center, Inc.
	19984731	G	Franklin P. Perdue.
		G	IMASCO Limited.
		G	GOL–PAK Holdings, Inc.
	19984772	G	Norsk Hydro ASA.
		G	Meridian Technologies Inc.
		G	Meridian Technologies Inc.
30–SEP–98	19981707	G	N.V. Koninklije Nederlandsche Petroleum Maatschap.
		G	The Coastal Corporation.
		G	ANR Field Services Company; ANR Production Company.
	19983799	G	Medtronic, Inc.
		G	Physio-Control International Corporation.
		G	Physio-Control International Corporation.
	19984508	G	CMS Energy Corporation.
		G	Carolyn Louise Adams.
		G	Continental Natural Gas, Inc.
	19984584	G	Carolyn Louise Adams.
		G	CMS Energy Corporation.
		G	CMS Energy Corporation.
	19984641	G	Tele-Communications, Inc.
		G	Jones Growth Partners L.P.
		G	Jones Growth Partners L.P.
	19984670	G	American Financial Group, Inc.
		G	Old Republic Life Insurance Group, Inc.
		G	Old Republic Life Insurance Company of New York.
	19984697	G	First Investors Financial Services Group., Inc.
		G	Fortis AG S.A.
		G	Auto Lenders Acceptance Corporation.
	19984698	G	irst Investors Financial Services Group, Inc.
		G	Fortis AMEV N.V.
		G	Auto Lenders Acceptance Corporation.
	19984707	G	HK Systems, Inc.
		G	Endura Software Corporation.
		G	Endura Software Corporation.
	19984712	G	Rhone Captial LLC.
		G	Michael A. Bumstead.
		G	Bumstead Manufacturing, Inc.
		G	Bumstead Manufacturing, Inc. Charitable Remainder Trust.
	19984713	G	Rhone Captial LLC.
		G	Steven G. Bumstead.
		G	Bumstead Manufacturing, Inc.
		G	Bumstead Manufacturing, Inc. Charitable Remainder Trust.
	19984756	G	Met-Pro Corporation.
		G	Vivendi, a French company.
		G	Flex-Kleen Corporation.
01–OCT–98	19982847	G	Metallgesellschaft AG.
		G	Cyprus Amax Minerals Corporation.
		G	Cyprus Foote Mineral Corporation.
	19984514	G	Hitachi, Ltd.
		G	AB Volvo.
		G	Euclid-Hitachi Heavy Equipment, Inc.
	19984683	G	John J. Rigas.
		G	Doris Holdings, L.P.
		G	SVHH Cable Acquisition, L.P.
	19984757	G	Fresenius Aktiengesellschaft.
		G	Pharmacia & Upjohn, Inc.
		G	Pharmacia & Upjohn, Co.
02–OCT–98	19984568	G	Heritage Fund II, L.P.
		G	BankAmerica Corporation.
		G	Duo-Tang, Inc.
	19984571	G	Florida Dairy Farmers' Association.
		G	Tampa Independent Dairy Farmers' Association, Inc.
		G	Tampa Independent Dairy Farmers' Association, Inc.
	19984638	G	Tele-Communications, Inc.
		G	Cable TV Fund 15–A, Ltd.
		G	Cable TV Fund 15–A, Ltd.
	19984659	G	John D. Phillips.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	World Access, Inc.
		G	World Access, Inc.
	19984673	G	HCC Insurance Holdings, Inc.
		G	Howard V. Barton.
		G	Sun Employer Services, Inc.
	19984689	G	Dumas M. Simeus.
		G	Imasco Limited.
		G	Imasco Holdings, Inc.
		G	Fast Food Merchandisers, Inc.
	19984694	G	Schurz Investment Partnership.
		G	Arvida/JMB Partners, L.P.
		G	Gulf and Pacific Communications Limited Partnership.
	19984699	G	Michael Lambert.
		G	Roy Speer.
		G	Speer Communications Holding I Limited Partnership.
		G	WNAB Limited Partnership.
		G	WNAB Channel 58 Nashville Inc.
	19984710	G	Golder, Thoma, Cressey, Rauner Fund V, L.P.
		G	Curtis L. and LaVonne A. Hough.
		G	Hough Real Estate Company.
		G	H & H Trucking, Inc.
		G	Cambridge Metals & Plastics, Inc.
	19984711	G	Dean Foods Company.
		G	Berkeley Farms, Inc.
		G	Berkeley Farms, Inc., a California Corporation.
	19984727	G	Enron Corp.
		G	Kafus Environmental Industries, Ltd.
		G	Kafus Environmental Industries, Ltd.
	19984742	G	Michael R. Cannon.
		G	Unique Casual Restaurants, Inc.
		G	Fuddruckers, Inc.
	19984753	G	Infocure Corporation.
		G	Reynolds and Reynolds Company (The).
		G	Health Care Systems Division.
	19984760	G	Fujirebio Inc.
		G	Centocor, Inc.
		G	CDP Holdings Corp.
		G	Centocor Diagnostics of Pennsylvania, Inc.
	19984766	G	R&B Falcon Corporation.
		G	Cliffs Drilling Company.
		G	Cliffs Drilling Company.
	19984771	G	Watsco, Inc.
		G	Leon P. Brassard.
		G	Heat, Inc.
	19984776	G	Ocean Group plc.
		G	Kenneth Lashutka.
		G	A.W. Fenton.
	19984777	G	America Online, Inc.
		G	Geraldine Bond Laybourne and Lawrence C. Laybourne.
		G	Oxygen Media, Inc.
	19984782	G	Organization Real, S.A. De C.V.
		G	White Cap, Inc.
		G	White Cap, Inc.
	19984783	G	Enrique Garcia Gamboa.
		G	White Cap, Inc.
		G	White Cap, Inc.
	19984786	G	CKS Group, Inc.
		G	USWeb Corporation.
		G	USWeb Corporation.
	19984787	G	USWeb Corporation.
		G	CKS Group, Inc.
		G	CKS Group, Inc.
	19984789	G	Beverly Enterprises, Inc.
		G	Rodney K. Kebo and Kathleen S. Kebo.
		G	M–K Home Medical, Inc.
	19984790	G	MAAX, Inc.
		G	Sunbeam Corporation.
		G	Coleman Spas, Inc.
	19984791	G	General Parts, Inc., a North Carolina Corporation.
		G	APS Holding Corporation, a Delaware Corporation.
		G	APS Holding Corporation, a Delaware Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19984798	G	Carriage Services, Inc.
		G	Service Corporation International.
		G	RMG Trust; SCI Oklahoma Funeral Services, Inc.
		G	SCI Virginia Funeral Services, Inc.
	19984801	G	Wella AG.
		G	Smith Investment Company.
		G	Belvedere Company.
	19984803	G	The Reader's Digest Association, Inc.
		G	Rodale Press, Inc.
		G	Leman Publications, Inc.
	19984809	G	British-Borneo Petroleum Syndicate, P.L.C.
		G	Hardy Oil & Gas plc.
		G	Hardy Oil & Gas plc.
	19984810	G	English China Clays plc.
		G	Minco Acquisition Corporation.
		G	Minco Acquisition Corporation.
	19984811	G	Jacor Communications, Inc.
		G	Kenneth J. Roberts.
		G	KADM(FM), L.P.
		G	Kelsho Communications, L.P.
	19984820	G	Chancellor Media Corporation.
		G	General Electric Company
		G	Pegasus Broadcasting of San Juan, L.L.C.
	19984821	G	Coloniale S.r.l.
		G	John E. Nahra.
		G	DASI Products, Inc.
		G	DASI Manufacturing.
05–OCT–98	19984660	G	World Access, Inc.
		G	James R. Elliott.
		G	Cherry Communications, Inc.
	19984702	G	MEI Holdings, L.P.
		G	HR Funding, L.P.
		G	Houlihan's Restaurant Group, Inc.
	19984703	G	HR Funding, L.P.
		G	MEI Holdings, L.P.
		G	Malibu Entertainment Worldwide, Inc.
	19984823	G	Sybron International Corporation.
		G	Thomas Lansing.
		G	Pinnacle Products of Wisconsin, Inc.
	19984824	G	Walter Scott, Jr.
		G	Commonwealth Telephone Enterprises, Inc.
		G	Commonwealth Telephone Enterprises, Inc.
	19984828	G	Flathead Electric Cooperative, Inc.
		G	PacifiCorp.
		G	PacifiCorp.
06–OCT–98	19984624	G	Shamrock Holdings, Inc.
		G	Brierley Investments Limited.
		G	Brierley Investments Limited.
	19984654	G	Sulzer AG.
		G	Harsco Corporation.
		G	Harsco UK.
	19984778	G	Geraldine Bond Laybourne and Lawrence C. Laybourne.
		G	America Online, Inc.
		G	America Online, Inc.
		G	Mom's Club, Inc.
		G	AOLV Health Living Channel, Inc.
	19984785	G	Winbond Electronics Corporation.
		G	Information Storage Devices, Inc.
		G	Information Storage Devices, Inc.
	19984836	G	Triumph Group, Inc.
		G	DV Industries, Inc.
		G	DV Industries, Inc.
07–OCT–98	19984633	G	Catholic Healthcare West.
		G	UniHealth.
		G	Unihealth.
	19984745	G	DST Systems, Inc.
		G	USCS International, Inc.
		G	USCS International, Inc.
	19984752	G	Sundstrand Corporation.
		G	Harnischfeger Industries, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
		G	The Horsburg & Scott Co.
	19984754	G	Norwest Corporation.
		G	Trivest Fund I, Ltd.
		G	Norwesco, Inc.
	19984781	G	Welsh Carson Anderson & Stowe, IV, L.P.
		G	MedQuist Inc.
		G	MedQuist Inc.
08–OCT–98	19984582	G	E.I. du Pont de Nemours and Company.
		G	Hewlett-Packard Company.
		G	Hewlett-Packard Company.
	19984739	G	Carlyle Bottling, L.L.C.
		G	Ace Ginger Beer, Inc.
		G	Ace Ginger Beer, Inc.
	19984740	G	Cadbury Schweppes plc.
		G	Ace Ginger Beer, Inc.
		G	Ace Ginger Beer, Inc.
	19984792	G	Welsh, Carson, Anderson & Stowe VIII, L.P.
		G	Concentra Managed Care Inc.
		G	Concentra Managed Care Inc.
09–OCT–98	19984581	G	Franz Haniel & CIE, GmbH.
		G	Marvin and Mildred Conney (husband and wife).
		G	Conney Safety Products Co., Inc.
	19984652	G	The SKM Equity Fund II, L.P.
		G	Hayim Abulafia.
		G	World Bazaars, Inc.
	19984704	G	Windward Capital Associates, L.P.
		G	Robert Llorens.
		G	Lorro, Inc.
	19984725	G	Darigold Farms.
		G	Jack Bruni.
		G	Echo Spring Dairy, Inc.
	19984769	G	Stephen E. Myers.
		G	Narragansett Capital Partners-A, L.P.
		G	Fanch Cablevision of Colorado, Limited Partnership.
	19984774	G	Basic American Inc.
		G	Diageo plc.
		G	The Pillsbury Company.
	19984788	G	Queensway Financial Holdings Limited.
		G	The Allstate Corporation.
		G	Pembridge Insurance Services Corp.
+	19984793	G	Paul G. Allen.
		G	Kelso Investment Associates V, L.P.
		G	CCA Holdings Corp, CCT Holdings Corp.
		G	Charter Communications Long Beach, Inc.
	19984794	G	Paul G. Allen.
		G	Charter Communications Group.
		G	Charter Communications Inc.
	19984817	G	Associated British Ports Holdings PLC.
		G	Johnson Controls Inc.
		G	Johnson Controls World Services, Inc.
	19984819	G	Paul G. Allen.
		G	Charterhouse Equity Partners II, L.P.
		G	Charter Comm II, Inc., Charter Comm, L.L.C.
	19984825	G	Stichting Administratiekantoor ABN AMRO Holding.
		G	Dr. Aloysio de Andrade Faria.
		G	Taluk S.A.
	19984833	G	Centex Corporation.
		G	Calton, Inc.
		G	Calton Homes, Inc.
	19984842	G	Rhone Capital LLC.
		G	John H. Hoag.
		G	Flintlock, Ltd.
	19984843	G	Dynamex, Inc.
		G	Robert J. Mitzman.
		G	Q International Courier, Inc.
	19984845	G	The Kroger Co.
		G	Hilander Foods, Inc.
		G	Hilander Foods, Inc.
	19984847	G	George L. Argyros.
		G	DST Systems, Inc.
		G	DST Systems, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Transaction No.	ET req status	Party name
	19984849	G	Medtronic, Inc.
		G	Midas Rex, L.P.
		G	Midas Rex, L.P.
	19984851	G	Wolseley plc.
		G	John L. Meyer, Jr.
		G	L&H Plumbing and Heating Supplies Inc.
	19984854	G	TSO Holding Corp.
		G	David Baird, IV.
		G	Haddonfield Lumber Co., U.S. Components, Inc.
	19984855	G	New American Healthcare Corporation.
		G	Lucius O. Crosby Memorial Hospital.
		G	Lucius O. Crosby Memorial Hospital.
	19984856	G	UBS AG.
		G	CHB Capital Partners, L.P.
		G	Trussway Holdings, Inc.
	19984857	G	The Dll Group, Inc.
		G	Hewlett-Packard Company.
		G	Hewlett-Packard Company.
	19984861	G	Charter plc.
		G	Aluminum Company of America.
		G	Alcotec Wire Company.
	19984863	G	EOTT Energy Partners, L.P.
		G	Koch Industries.
		G	Koch Industries.
	19984866	G	Quorum Health Group, Inc.
		G	Northwest Health System, Inc.
		G	Northwest Health System, Inc.
	19984867	G	MNBA Corporation.
		G	Union Planters Corporation.
		G	Union Planters Corporation.
	19990003	G	General Motors Corporation.
		G	Asbury Villanova L.L.C.
		G	Asbury Automotive Texas L.L.C., Coggin Saturn, Inc.
	19990008	G	Ford Motor Company.
		G	Gerald Vanderstyne, Jr.
		G	Vanderstyne Ford, Inc., Vanderstyne Ford of Avon, I.
	19990011	G	Asif A. Sayeed.
		G	Maxicare Health Plans, Inc.
		G	Maxicare Health Plans of the Midwest, Inc.
	19990015	G	Kotio Manufacturing Co., Ltd.
		G	Hella KG Hueck & Co.
		G	HNA NAL Holding, Inc.
	19990020	G	Hoak Communications Partners, L.P.
		G	Trinity plc.
		G	Trinity 101 Limited, Trinity Holdings Inc.
	19990021	G	Group Maintenance America Corp.
		G	William Witz.
		G	Continental Electrical Construction.
	19990024	G	Cameron Ashley Building Products, Inc.
		G	Ian and Linda Kramer.
		G	IBEX Industries, Inc.
	19990030	G	Charles R. Wolf.
		G	Robert Waxman, Inc.
		G	Robert Waxman, Inc.
	19990041	G	George Rosenthal.
		G	Time Warner Inc.
		G	Warner Hollywood Studios.
	19990042	G	Mark Rosenthal.
		G	Time Warner Inc.
		G	Warner Hollywood Studios.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–29151 Filed 10–29–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Program Announcement 13655.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), OS, HHS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act, Title VI, Grants for Native Americans, Part A–Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in fiscal year (FY) 1999 under the Older Americans Act, title VI, Grants for Native Americans, part A–Indian Program, from all current title VI, part A grantees, current grantees who wish to leave a consortium and apply as a new grantee, and eligible federally recognized Indian tribal organizations that are not now participating in title VI and would like to apply as a new grantee. Successful applications from new grantees will be funded if funds permit.

DATE: Applications must be received or postmarked on or before January 28, 1999.

ADDRESSES: See Appendix A.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4743, 330 Independence Avenue, SW, Washington, DC 20201, telephone (202) 619–2713.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created title VI, Grants for Indian Tribal Organizations. The purpose of this title is to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older Americans Act. (Title III of the Older Americans Act, entitled ''Grants for State and Community Programs on Aging'' is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs—was added.

Nutritional services and information and assistance services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and assistance, transportation, chore services, and other supportive services which contribute to the welfare of older Native Americans.

2. Eligibility of an Indian Tribal Organization or Indian Tribe to Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: ''(1) the tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services.'' For purposes of title VI, part A, the terms ''Indian tribe'' and ''tribal organization'' have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns all federally recognized Indian tribal organizations, those currently participating in title VI, part A individually or as members of a consortium and those that are not currently participating in title VI, part A.

3. Available Funds

Distribution of funds among tribal organizations is subject to the availability of appropriations to carry out title VI, part A. As stated in section 614A(b) of the Act, the amount of the grant made under this part to a tribal organization for FY 1992 and for each subsequent fiscal year shall be not less than the amount of the grant made under this part to the tribal organization for FY 1991 as stated under section 614A(a) of the Act. If the funds appropriated to carry out this part in a fiscal year subsequent to FY 1991 exceed the funds appropriated to carry out this part in FY 1991, then the amount of the grant (if any) made under this part to a tribal organization for the subsequent fiscal year shall be: (1) Increased by such amount as the Assistant Secretary considers to be appropriate, in addition to the amount of any increase required by subsection (a), so that the grant equals or more closely approaches the amount of the grant made under this part to the tribal organization for FY 1980; or (2) an amount the Assistant Secretary considers to be sufficient if the tribal organization did not receive a grant under this part for either FY 1980 or FY 1991.

Applications from current grantees who are a part of a consortium and wish to leave the consortium will be treated as new grant applications. Successful new grant applications for both current grantees who are leaving a consortium and tribal organizations who are not current grantees will be funded pending availability of additional funds.

Information on typical grant levels in FY 1998 is given below as a guide to *possible* funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (number of older Indians age 60 years and over, represented by the tribal organization)	Amounts of awards in FY 1998 (dollars)
50 to 100	57,180
101 to 200	64,880
201 to 300	73,670
301 to 400	83,020
401 to 500	91,810
501 to 1500	106,350
1501+	139,640

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for *project period April 1, 1999–March 31, 2002,* as described in section 5 below, ''Content of the Application.''

A three year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on site monitoring at least once during the three year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds and possibly termination of the grant within the project period.

Thirty days prior to the end of each budget period within the three year project period grantees shall notify AoA as to their desire to continue as a grantee. Failure to submit this documentation within the required timeframe may result in loss of grant funding. At the beginning of each budget period within the three year project period grantees will be notified of the funding level for the subsequent year.

One original application, signed by the principal official of the Tribe, and two copies of the complete application, including all attachments, must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Avenue, SW, Washington, DC 20201. Incomplete applications and applications postmarked after the closing date will not be considered for funding.

5. Content of the Application

The application must meet the criteria in sections 614(a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. Contact the AoA Regional Office in your geographic area if you have questions concerning the content of the application. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the current supportive and nutrition service needs of the elders to be represented by the Tribal Organization. This section must also include a discussion of how the needs were evaluated.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) *Nutrition.* Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, title III, which include:

1. Provide at least one hot or other appropriate meal a day, 5 or more days a week in a congregate setting, any additional meals which the recipient of a grant may elect to provide. A ''meal'', as used in section 307(a)(13), 308(b)(7), 311(a)(4), 331(1), 336, 338(a)(1), 339, and 339A of the Act and § 1321.17, § 1321.59 and § 1321.64, is a planned event in a day at which a variety of prepared foods are provided to an individual. These meals shall comply with the U.S. Dietary Guidelines for Americans published by the Secretary of the Department of Agriculture. Additionally, the meals must provide the nutrients specified in the current, daily Recommended Dietary Allowances, as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences as specified in Section 339(2) unless the meal is a special meal provided to meet the health, religious, or ethnic considerations of eligible individuals. Snacks, partial meals, and second helpings are not considered meals.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, 5 or more days a week, and any additional meals which the recipient of a grant may elect to provide. The above definition of a meal also applies here. Thus, neither individual grocery items nor food vouchers may be used in lieu of home delivered meals.

If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) *Information and Assistance.* Information and assistance services are required. They must be available for older Indians living in the title VI, part A service area and there should be a description of what information and assistance services will be provided and how they will be provided. The estimated number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and assistance services, the application must state how such services are provided in other ways, and how they are financed.

(c) *Other Supportive Services.* The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The description should include what supportive services will be provided and how they will be provided. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as ''Supportive Services.''

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is to be considered as a ''Supportive Service.''

(d) *Coordination with title III.* The application should provide a description of how title VI and title III resources and services are to be coordinated within the title VI service area, including information and assistance service.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objectives and results or benefits expected indicated in Item A and B above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include an appropriate narrative description of the geographical area to be served and an assurance that procedures will be adopted to ensure against duplicate services being provided to the same recipients. A map of the designated service area may be included in the application.

E. Additional Information

(1) Older Indians in the Title VI, Part A Service Area

The law requires that a tribal organization must represent at least 50 persons aged 60 years or over in order to be eligible for title VI funding. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The tribal organization may use Bureau of Statistics population figures, or may develop its own

population statistics, but they must be approved by the Bureau of Indian Affairs in order to establish eligibility, as required in section 614(b) of the Older American Act, as amended. The amount of the grant is based on the number of Indians or Alaskan Natives aged 60 years or over in the proposed service area. Thus, the application should include only the number of Indians and Alaskan Natives aged 60 years or over in the proposed service area and not the total population census of all tribal members, age 60 and above, unless all the tribal members live in the proposed service area. If there is overlap between two or more title VI, part A applicants, as stated under ''Geographic Location'', the eligible elders can only be counted once and included in one application. The applicants are responsible for determining how the eligible elders will be counted. The same elder may not be counted by more than one applicant. This must be stated clearly in the application and signed by the principal official of the tribal organization.

As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an ''older Indian'' for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of ''older Indian'' for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. All Tribes in a consortium must use the same age for ''older Indian.''

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit an original copy of the Tribal council resolution authorizing participation in title VI, part A for the grant period April 1, 1999 to March 30, 2002. If the tribal organization represents a consortium of more than one Tribe, a resolution is required from each participating Tribe, specifically authorizing representation by the tribal organization for the purpose of title VI, part A of the Older Americans Act for the grant period April 1, 1999 to March 31, 2002.

(3) Program Assurances

Title VI, part A Program Assurances must be included in the application. The title VI, part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988 (see appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire project period, April 1, 1999–March 31, 2002.

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Administrator for the Administration on Aging. (See appendix A)

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applications must identify both the principal official of the tribal organization, and the proposed title VI program director: Name, Title, Address including Zip Code, Telephone Number, and, if available, the FAX Number and E-mail address. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the applicant must list the federally recognized tribes which are included. The tribal resolution from each tribe in the consortium must be included in the application.

(6) Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before January 28, 1999. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

(7) Action on Applications

Awards will be made by the Assistant Secretary for Aging. Funding decisions will be announced as soon as possible.

(Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.)

Dated: October 23, 1998.

Jeanette C. Takamura,

Assistant Secretary for Aging.

Appendix A

Regional Offices

Region I (CT, MA, ME, NH, RI, VT)

Bob O'Connell, Bi-Regional Administrator, John F. Kennedy Building, Room 2075, Boston, Massachusetts 02203, (617) 565–1158, FAX (617) 565–4511

Region II (DC, DE, MD, NY, NJ, PA, PR, VA, VI, WV)

Bob O'Connell, Bi-Regional Administrator, 26 Federal Plaza, Room 38–102, New York, New York 10278, (212) 264–2976, FAX (212) 264–0114

Region IV (AL, FL, GA, KY, MS, NC, SC, TN)

John Diaz, Bi-Regional Administrator, 101 Marietta Tower, Suite 1702, Atlanta, GA 30323, (404) 331–5900, FAX (404) 331–2017

Region V (IL, IN, MI, MN, OH, WI)

Larry Brewster, Bi-Regional Administrator, 105 West Adams Street, 10th Floor, Chicago, Illinois 60603, (312) 353–3141, FAX (312) 886–8533

Region VI (AR, LA, OK, NM, TX)

John Diaz, Bi-Regional Administrator, 1301 Young Street, Room 736, Dallas, Texas 75201, (214) 767–2971, FAX (214) 767–2951

Region VII (IA, KS, MO, NE)

Larry Brewster, Bi-Regional Administrator, 1150 Grand Avenue, suite 600, Kansas City, MIssouri 64106, (816) 374–6015, FAX (816) 374–6020

Region VIII (CO, MT, ND, SD, UT, WY)

Percy Devine, III, Bi-Regional Administrator, 1961 Stout Street, Room 908, Federal Office Building, Denver, Colorado 80294–3538, (303) 844–2951, FAX (303) 844–2943

Region IX (AS, AZ, CA, CNMI, GU, HI, NV, TTPI)

Percy Devine, III, Bi-Regional Administrator, 50 United Nations Plaza, Room 455, San Francisco, California 94102, (415) 437–8780, FAX (415) 437–8782

Region X (AK, ID, OR, WA)

Chisato Kawabori, Regional Administrator, Blanchard Plaza, MS-RX-33; Room 1202, 2201 Sixth Avenue, Seattle, Washington 98121–1828, (206) 615–2298, FAX (206) 615–2305

Appendix B

Older Americans Act—Section 614(a)—No grant may be made under this part unless the eligible tribal organization submits an application to the Assistant Secretary which meets such criteria as the Assistant Secretary may by regulation prescribe. Each such application shall—

(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organizations;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and assistance services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contract with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provision of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1326.19 * * * The application shall provide for: (d) Assurances as prescribed by the Assistant Secretary that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through § 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

U.S. Department of Health and Human Service

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or state highway department while in operation, state employees in each local unemployment office, performers in concert halls or radio studios).

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

''Controlled substance'' means a controlled substance in Schedules I through V of the Controlled Substance Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

''Conviction'' means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

''Criminal drug statute'' means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

''Employee'' means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all ''in direct charge'' employees; (ii) all ''direct charge'' employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and

including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f). The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street Address, City, County, State, Zip Code)

Check ____ if there are workplaces on file that are not identified here. Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for state-wide and state agency-wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Grants Management Division; 330 Independence Avenue, SW, Room 4256–Cohen; Washington, D.C. 20201

Signature _____

Date _____

Title _____

Organization _____

DGMO Form #2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against the principal for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions'', provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To be supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation of this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer of employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division, 330 Independence Avenue, SW, Room 4256-Cohen; Washington, DC 20201–0001.

[FR Doc. 98–29088 Filed 10–29–98; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Peer Review Meeting of the Draft Research Protocol of the Full Ensemble Fire Testing of Fire Fighters' Protective Clothing and Equipment

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Peer Review meeting on the NIOSH-funded study by the National Institute of Standards and Technology (NIST) entitled: ''Full Ensemble Fire Testing of Fire Fighters' Protective Clothing and Equipment.''

Time and Date: 8 a.m.—5 p.m., December 2, 1998.

Location: National Institute of Standards and Technology, Lecture Room D, Administration Building 101,

Building and Fire Research Laboratory, Gaithersburg, MD 20899–0001.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: To provide peer review of the draft research protocol of a study of burn hazards associated with full ensemble fire fighters' protective clothing and equipment. Also, to exchange information among government, Page 2 stakeholders, and interested parties on the scientific, procedural, and related aspects of the study.

Participants will provide NIOSH with their individual advice and comments regarding the technical and scientific aspects of the study protocol, ''Full Ensemble Fire Testing of Fire Fighters' Protective Clothing and Equipment.''

Matters to be Discussed: The agenda will include a review of the NIST research plan; request for field experience and other information and scientific input on the planned research topics; and scientific discussion on the types and usage of thermal sensors of relevance to exposure estimation. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will also be considered.

Contact Person for Additional Information: Thomas K. Hodous, M.D., Project Officer, Division of Safety Research, NIOSH, CDC, M/S P–1172, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888. Telephone 304/285–5943, E-mail thh1@cdc.gov. Copies of the draft protocol may be obtained by contacting Dr. Hodous.

Dated: October 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–29098 Filed 10–29–98; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0331]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; FDAMA Third-Party Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments on the collection of information by November 30, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; FDAMA Third-Party Review (OMB Control Number 0910–0375—Extension)

Section 210 of FDAMA establishes a new section 523 of the Federal Food, Drug, and Cosmetic Act (the act), directing FDA to accredit persons in the private sector to review certain premarket applications and notifications. As with the Third-Party Review Pilot Program previously conducted by FDA, participation in this Third-Party Review Pilot Program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation. Accredited third-party reviewers will have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation, to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time. This information collection will allow FDA to implement the Accredited Person Review Program established by FDAMA and improve the efficiency of 510(k) review for low- to moderate-risk devices.

Description of Respondents: Businesses or other for profit organizations.

In the **Federal Register** of August 4, 1998 (63 FR 41575), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Respondent	Total Hours
Requests for accreditation	40	1	40	24	960
510(k) reviews conducted by accredited third parties	35	4	140	40	5,600
Total hours					6,560

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Item	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
510(k) reviews	35	4	140	10	1,400[2]

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Due to clerical error, the recordkeeping burden hours for 510(k) reviews that appeared in a notice issued in the FEDERAL REGISTER of August 4, 1998 (63 FR 41575), were incorrect. Table 2 of this document contains the correct estimates.

The burdens are explained as follows:

1. Reporting

a. *Requests for accreditation*: Under the agency's Third-Party Review Pilot Program, the agency received 37 applications for recognition as third-party reviewers, of which the agency recognized 7. Under this expanded program, the agency anticipates that it will not see a significant increase in the number of applicants. Therefore, the agency is estimating that it will receive 40 applications. The agency anticipates that it will accredit 35 of the applicants to conduct third-party reviews.

b. *510(k) reviews conducted by accredited third parties*: In 18 months under the Third-Party Review Pilot Program, FDA received only 22 510(k)'s that were requested and were eligible for review by third parties. Because the new program is not as limited in time, and is expanded in scope, the agency anticipates that the number of 510(k)'s submitted for third-party review will increase. The agency anticipates that it will receive approximately 140 third-party review submissions annually, i.e., approximately 4 annual reviews per each of the estimated 35 accredited reviewers.

2. Recordkeeping

Third-party reviewers are required to keep records of their review of each submission. The agency anticipates approximately 140 annual submissions of 510(k)'s for third-party review. The agency estimates that each third-party reviewer will require approximately 10 annual hours to maintain records of their reviews and reports.

Dated: October 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29108 Filed 10–29–98; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Surveys to Assess the Outcomes of Curricular Changes at Eight Medical Schools—NEW

In July, 1998, eight medical schools were awarded federal funding under the Undergraduate Medical Education Program for the Twenty-first Century (UME–21) initiative to develop and implement curricular change during the clinical years. This project aims to bring about change in the clinical phase of medical education so that medical students are better prepared for residency training and practice. The selected schools must institute specific changes in their clinical education programs, including the addition of content related to clinical practice in a managed care environment and the introduction of primary care based clinical experiences that cut across the generalist disciplines. UME–21 is administered by the Bureau of Health Professions of the Health Resources and Services Administration. The surveys are designed to: (1) Obtain the opinions of graduating seniors regarding their education in selected topics important for practice in the changing health care environment, and (2) determine whether the physicians who supervise the graduatesduring their first year of residency believe that these graduates possess appropriate knowledge, skills, and attitudes.

The surveys are being conducted as part of a broader evaluation of the overall UME–21 initiative. The study population of students will consist of 2,400 seniors at the eight medical schools, evenly distributed between the graduating classes of 1999 and 2000. The study population of residency program directors will consist of approximately 1,200 physicians in residency programs throughout the country determined by the residency locations of the graduating seniors in each year.

The estimated respondent burden is as follows:

Respondent	Number of respondents	Responses per respondent	Hours per response (minutes)	Total Burden hours
Students	2,400	1	7	280
Program Directors	1,200	2	7	280

Respondent	Number of respondents	Responses per respondent	Hours per response (minutes)	Total Burden hours
	3,600	.....	.....	560

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 23, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–29111 Filed 10–29–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Application for NHSC Recruitment and Retention Assistance (in Use Without Approval)

The National Health Service Corps (NHSC) of the HRSA's Bureau of Primary Health Care assists underserved communities through the development, recruitment, and retention of primary health care clinicians dedicated to serving people in health professional shortage areas.

The Application for NHSC Recruitment and Retention Assistance submitted by sites or clinicians requests information on the practice site, sponsoring agency, recruitment contact, staffing levels, service users, site's 5-year infant mortality or low birth rate averages, and next nearest site. The information on the application is used for determining eligibility of sites and to verify the need for NHSC providers. Sites must submit applications annually or when they need a provider.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hour
Application	1,000	1	.75	750

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 23, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–29112 Filed 10–29–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG's Provider Self-Disclosure Protocol

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the OIG's recently-issued Provider Self-Disclosure Protocol. This Self-Disclosure Protocol offers health care providers specific steps, including a detailed audit methodology, that may be undertaken if they wish to work openly and cooperatively with the OIG to efficiently quantify a particular problem and, ultimately, promote a higher level of ethical and lawful conduct throughout the health care industry.

FOR FURTHER INFORMATION CONTACT: Ted Acosta, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION: The OIG has long stressed the role of the health care industry in combating health care fraud, and believes that health care providers can play a cooperative role in identifying and voluntarily disclosing program abuses. The OIG's use of voluntary self-disclosure programs, for example, is premised on a belief that health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. Based on insights gained from a pilot program undertaken as part of Operation Restore Trust, discussions with the provider community and the growing need for an effective disclosure mechanism, the OIG has now developed a more open-ended process, or protocol, for making a disclosure and allowing a health care provider to cooperative work with the OIG. Unlike the previous voluntary disclosure pilot programs, this self-disclosure protocol gives detailed guidance to the provider on what information is appropriate to include as part of an investigative report and how to conduct an audit of the matter, while setting no limitations on the conditions under which a health care provider may disclose information to the OIG.

A reprint of the OIG's Provider Self-Disclosure Protocol follows.

Provider Self-disclosure Protocol

I. Introduction

The Office of Inspector General (OIG) of the United States Department of

Health and Human Services (HHS) relies heavily upon the health care industry to help identify and resolve matters that adversely affect the Federal health care programs (as defined in 42 U.S.C. 1320a–7b(f)). The OIG believes that, as participants in the Federal health care programs, health care providers have an ethical and legal duty to ensure the integrity of their dealings with these programs. This duty includes an obligation to take measures, such as instituting a compliance program, to detect and prevent fraudulent, abusive and wasteful activities. It also encompasses the need to implement specific procedures and mechanisms to examine and resolve instances of non-compliance with program requirements. Whether as a result of voluntary self-assessment or in response to external forces, health care providers must be prepared to investigate such instances, assess the potential losses suffered by the Federal health care programs, and make full disclosure to the appropriate authorities. To encourage providers to make voluntary disclosures, the OIG issues this Provider Self-Disclosure Protocol (Protocol).

The concept of voluntary self-disclosure is not new to the OIG. For many years, the OIG has worked informally with providers and suppliers that came forward to cooperate with OIG to resolve billing, marketing or quality of care problems. In 1995, as part of the Operation Restore Trust (ORT) initiative, HHS and the Department of Justice (DOJ) announced a pilot voluntary disclosure program, which embraced OIG's longstanding policy favoring voluntary self-disclosure. The demonstration program was developed in coordination with representatives of the OIG, DOJ, various United States Attorneys' Offices, the Federal Bureau of Investigation and the Health Care Financing Administration (HCFA). The pilot program was limited to five States (New York, Florida, Illinois, Texas and California) and four different types of providers (home health agencies, skilled nursing facilities, durable medical equipment suppliers, and hospice providers). It gave those qualifying entities a formal mechanism for disclosing and seeking the resolution of matters relating to the Medicare and Medicaid programs. In 1997, the pilot voluntary disclosure program was concluded. While there was limited participation in the pilot, the OIG gained valuable insight into the variables influencing the decision to make a disclosure to the Government.

The OIG believes it must continue encouraging the health care industry to conduct voluntary self-evaluations and providing viable opportunities for self-disclosure. By establishing this Protocol, the OIG renews its commitment to promote an environment of openness and cooperation. The Protocol has no rigid requirements or limitations. Rather, it provides the OIG's views on what are the appropriate elements of an effective investigative and audit working plan to address instances of non-compliance. Providers that follow the Protocol expedite the OIG's verification process and thus diminish the time it takes before the matter can be formally resolved. Failure to conform to each element of the Protocol is not necessarily fatal to the provider's disclosure, but will likely delay the resolution of the matter.

The OIG's principal purpose in producing the Protocol is to provide guidance to health care providers that decide voluntarily to disclose irregularities in their dealings with the Federal health care programs. Because a provider's disclosure can involve anything from a simple error to outright fraud, the OIG cannot reasonably make firm commitments as to how a particular disclosure will be resolved or the specific benefit that will enure to the disclosing entity. In our experience, however, opening lines of communication with, and making full disclosure to, the investigative agency at an early stage generally benefits the individual or company. In short, the Protocol can help a health care provider initiate with the OIG a dialogue directed at resolving its potential liabilities.

The decision to follow the OIG's suggested Protocol rests exclusively with the provider. While the OIG can offer only limited guidance on what is inherently a case-specific judgement, there are several considerations that should influence the decision. First, a provider that uncovers an ongoing fraud scheme within its organization immediately should contact the OIG, but should not follow the Protocol's suggested steps to investigate or quantify the scope of the problem. If the provider follows the Protocol in this type of situation without prior consultation with the OIG, there is a substantial risk that the Government's subsequent investigation will be compromised.

Second, the OIG anticipates that a provider will apply the Protocol's suggested steps only after an initial assessment substantiates there is a problem with non-compliance with program requirements. The initial identification of potential risk areas should be less intensive and need not conform to the Protocol's suggested procedures. Similarly, when the OIG conducts a national review of a particular billing practice, providers should consider the option of conducting a limited assessment of the practice under OIG review, rather than incur the expense of a comprehensive audit. In such cases, an audit that conforms to the Protocol's guidelines may be appropriate only in instances where a preliminary assessment suggests the provider has in fact engaged in the practices under OIG scrutiny.

II. The Provider Self-Disclosure Protocol

Unlike the earlier pilot program, there are no pre-disclosure requirements, applications for admission or preliminary qualifying characteristics that must be met. The Provider Self-Disclosure Protocol is open to all health care providers, whether individuals or entities, and is not limited to any particular industry, medical specialty or type of service. While no written agreement setting out the terms of the self-assessment will be required, the OIG expects the commitment of the health care provider to disclose specific information and engage in specific self-evaluative steps relating to the disclosed matter. In contrast to the pilot disclosure program, the fact that a disclosing health care provider is already subject to Government inquiry (including investigations, audits or routine oversight activities) will not automatically preclude a disclosure. The disclosure, however, must be made in good faith. The OIG will not continue to work with a provider that attempts to circumvent an ongoing inquiry or fails to fully cooperate in the self-disclosure process. In short, the OIG will continue its practice of working with providers that are the subject of an investigation or audit, provided that the collaboration does not interfere with the efficient and effective resolution of the inquiry.

The Provider Self-Disclosure Protocol is intended to facilitate the resolution of only matters that, in the provider's reasonable assessment, are potentially violative of Federal criminal, civil or administrative laws. Matters exclusively involving overpayments or errors that do not suggest that violations of law have occurred should be brought directly to the attention of the entity (e.g., a contractor such as a carrier or an intermediary) that processes claims and issues payment on behalf of the Government agency responsible for the particular Federal health care program (e.g., HCFA for matters involving Medicare). The program contractors are responsible for processing the refund and will review the circumstances surrounding the initial overpayment. If

the contractor concludes that the overpayment raises concerns about the integrity of the provider, the matter may be referred to the OIG. Accordingly, the provider's initial decision of where to refer a matter involving non-compliance with program requirements should be made carefully.

The OIG is not bound by any findings made by the disclosing provider under the Provider Self-Disclosure Protocol and is not obligated to resolve the matter in any particular manner. Nevertheless, the OIG will work closely with providers that structure their disclosures in accordance with the Provider Self-Disclosure Protocol in an effort to coordinate any investigatory steps or other activities necessary to reach an effective and prompt resolution. It is important to note that, upon review of the provider's disclosure submission and/or reports, the OIG may conclude that the disclosed matter warrants a referral to DOJ for consideration under its civil and/or criminal authorities. Alternatively, the provider may request the participation of a representative of DOJ or a local United States Attorney's Office in settlement discussions in order to resolve potential liability under the False Claims Act or other laws. In either case, the OIG will report on the provider's involvement and level of cooperation throughout the disclosure process to any other Government agencies affected by the disclosed matter.

III. Voluntary Disclosure Submission

The disclosing provider will be expected to make a submission as follows.

A. Effective Disclosure

The disclosure must be made in writing and must be submitted to the Assistant Inspector General for Investigative Operations, Office of Inspector General, Department of Health and Human Services, 330 Independence Avenue, SW, Cohen Building, Room 5409, Washington, DC 20201. Submissions by telecopier, facsimile or other electronic media will not be accepted.

B. Basic Information

The submission should include the following—

1. The name, address, provider identification number(s) and tax identification number(s) of the disclosing health care provider. If the provider is an entity that is owned, controlled or is otherwise part of a system or network, include a description or diagram describing the pertinent relationships and the names and addresses of any related entities, as well as any affected corporate divisions, departments or branches. Additionally, provide the name and address of the disclosing entity's designated representative for purposes of the voluntary disclosure.

2. Indicate whether the provider has knowledge that the matter is under current inquiry by a Government agency or contractor. If the provider has knowledge of a pending inquiry, identify any such Government entity or individual representatives involved. The provider must also disclose whether it is under investigation or other inquiry for any other matters relating to a Federal health care program and provide similar information relating to those other matters.

3. A full description of the nature of the matter being disclosed, including the type of claim, transaction or other conduct giving rise to the matter, the names of entities and individuals believed to be implicated and an explanation of their roles in the matter, and the relevant periods involved.

4. The type of health care provider implicated and any provider billing numbers associated with the matter disclosed. Include the Federal health care programs affected, including Government contractors such as carriers, intermediaries and other third-party payers.

5. The reasons why the disclosing provider believes that a violation of Federal criminal, civil or administrative law may have occurred.

6. A certification by the health care provider or, in the case of an entity, an authorized representative on behalf of the disclosing entity stating that, to the best of the individual's knowledge, the submission contains truthful information and is based on a good faith effort to bring the matter to the Government's attention for the purpose of resolving any potential liabilities to the Government.

C. Substantive Information

As part of its participation in the disclosure process, the disclosing health care provider will be expected to conduct an internal investigation and a self-assessment, and then report its findings to the OIG. The internal review may occur after the initial disclosure of the matter. The OIG will generally agree, for a reasonable period of time, to forego an investigation of the matter if the provider agrees that it will conduct the review in accordance with the Internal Investigation Guidelines and the Self-Assessment Guidelines set forth below.

IV. Internal Investigation Guidelines

All disclosures to the OIG under the Provider Self-Disclosure Protocol should include a report based on an internal investigation conducted by the health care provider. While a provider is free to discuss its preliminary findings with the OIG prior to completion of its investigation, the matter cannot be resolved until a comprehensive assessment has been completed pursuant to the following guidelines:

A. Nature and Extent of the Improper or Illegal Practice

A voluntary disclosure report should demonstrate that a full examination of the practice has been conducted. The report should contain a written narrative that—

1. Identifies the potential causes of the incident or practice (e.g., intentional conduct, lack of internal controls, circumvention of corporate procedures or Government regulations);

2. Describes the incident or practice in detail, including how the incident or practice arose and continued;

3. Identifies the division, departments, branches or related entities involved and/or affected;

4. Identifies the impact on, and risks to, health, safety, or quality of care posed by the matter disclosed, with sufficient information to allow the OIG to assess the immediacy of the impact and risks, the steps that should be taken to address them, as well as the measures taken by the disclosing entity;

5. Delineates the period during which the incident or practice occurred;

6. Identifies the corporate officials, employees or agents who knew of, encouraged, or participated in, the incident or practice and any individuals who may have been involved in detecting the matter;

7. Identifies the corporate officials, employees or agents who should have known of, but failed to detect, the incident or practice based on their job responsibilities; and

8. Estimates the monetary impact of the incident or practice upon the Federal health care programs, pursuant to the Self-Assessment Guidelines below.

B. Discovery and Response to the Matter

The internal investigation report should relate the circumstances under which the disclosed matter was discovered and fully document the measures taken upon discovery to address the problem and prevent future abuses. In this regard, the report should—

1. Describe how the incident or practice was identified, and the origin of the information that led to its discovery.

2. Describe the entity's efforts to investigate and document the incident or practice (e.g., use of internal or external legal, audit or consultative resources).

3. Describe in detail the chronology of the investigative steps taken in connection with the entity's internal inquiry into the disclosed matter including the following—

(a) A list of all individuals interviewed, including each individual's business address and telephone number, and their positions and titles in the relevant entities during both the relevant period and at the time the disclosure is being made. For all individuals interviewed, provide the dates of those interviews and the subject matter of each interview, as well as summaries of the interview. The health care provider will be responsible for advising the individual to be interviewed that the information the individual provides may, in turn, be provided to the OIG. Additionally, include a list of those individuals who refused to be interviewed and provide the reasons cited;

(b) A description of files, documents, and records reviewed with sufficient particularity to allow their retrieval, if necessary; and

(c) A summary of auditing activity undertaken and a summary of the documents relied upon in support of the estimation of losses. These documents and information must accompany the report, unless the calculation of losses is undertaken pursuant to the Self-Assessment Guidelines, which contain specific reporting requirements.

4. Describe the actions by the health care provider to stop the inappropriate conduct.

5. Describe any related health care businesses affected by the inappropriate conduct in which the health care provider is involved, all efforts by the health care provider to prevent a recurrence of the incident or practice in the affected division as well as in any related health care entities (e.g., new accounting or internal control procedures, increased internal audit efforts, increased supervision by higher management or through training).

6. Describe any disciplinary action taken against corporate officials, employees and agents as a result of the disclosed matter.

7. Describe appropriate notices, if applicable, provided to other Government agencies, (e.g., Securities and Exchange Commission and Internal Revenue Service) in connection with the disclosed matter.

C. The internal investigation report must include a certification by the health care provider, or in the case of an entity an authorized representative on behalf of the disclosing health care provider, indicating that, to the best of the individual's knowledge, the internal investigation report contains truthful information and is based on a good faith effort to assist the OIG in its inquiry and verification of the disclosed matter.

V. Self-Assessment Guidelines

To estimate the monetary impact of the disclosed matter, the health care provider also should conduct an internal financial assessment and prepare a report of its findings. This self-assessment may be performed at the same time as the internal investigation, or commenced after the scope of the non-compliance with program requirements has been established. In either case, the OIG will verify a provider's calculation of Federal health care program losses and it is strongly recommended that, at a minimum, the review conform to the following guidelines.

A. Approach

The self-assessment should consist of a review of either—(1) all of the claims affected by the disclosed matter for the relevant period; or (2) a statistically valid sample of the claims that can be projected to the population of claims affected by the matter for the relevant period. This determination should be based on the size of the population believed to be implicated, the variance of characteristics to be reviewed, the cost of the self-assessment, the available resources, the estimated duration of the review, and other factors as appropriate.

B. Basic Information

Regardless of which of these two approaches is used, the disclosing provider should submit to the OIG a work plan describing the self-assessment process. The OIG will review the proposal and, where appropriate, provide comments on the plan in a timely manner. At its option, the OIG may choose to carry out any necessary activities at any stage of the review to verify that the process is undertaken correctly and to validate the review findings. While the OIG is not obligated to accept the results of a provider's self-assessment, findings based upon procedures which conform to the Protocol will be given substantial weight in determining any program overpayments. In addition, the OIG will use the validated provider self-assessment report in preparing a recommendation to DOJ for resolution of the provider's False Claims Act or other liability. Among the issues that should be addressed in the plan are the following—

1. *Review Objective*—There should be a statement clearly articulating the objective of the review and the review procedure or combination of procedures applied to achieve the objective.

2. *Review Population*—The plan should identify the population, which is the group about which information is needed. In addition, there should be an explanation of the methodology used to develop the population and the basis for this determination.

3. *Sources of Data*—The plan should provide a full description of the source of the information upon which the review will be based, including the legal or other standards to be applied, the sources of payment data and the documents that will be relied upon (e.g., employment contracts, rental agreements, etc.).

4. *Personnel Qualifications*—The plan should identify the names and titles of those individuals involved in any aspect of the self-assessment, including statisticians, accountants, auditors, consultants and medical reviewers, and describe their qualifications.

C. *Sample Elements*

If the provider, in consultation with the OIG, determines that the financial review will be based upon a sample, the work plan should also include the sampling plan as follows—

1. *Sampling Unit*—The plan should define the sampling unit, which is any of the designated elements that comprise the population of interest.

2. *Sampling Frame*—The plan should identify the sampling frame, which is the totality of the sampling units from which the sample will be selected. In addition, the plan should document how the audit population differs from the sampling frame and what effect this difference has on conclusions reached as a result of the audit.

3. *Sample Size*—The size of the sample must be determined through the use of a probe sample. Accordingly, the plan should include a description of both the probe sample and the full sample. At a minimum, the full sample must be designed to generate an estimate with a ninety (90) percent level of confidence and a precision of twenty-five (25) percent. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample.

4. *Random Numbers*—Both the probe sample and the sample must be selected through random numbers. The source of

the random numbers used must be shown in the sampling plans. The OIG strongly recommends the use of its Office of Audit Services' Statistical Sampling Software, also known as ''RAT-STATS,'' which is currently available free of charge through the ''internet'' at ''www.hhs.gov/progorg/oas/ratstat.html''.

5. *Sample Design*—Unless the disclosing provider demonstrates the need to use a different sample design, the self-assessment should use simple random sampling. If necessitated, the provider may use stratified or multistage sampling. Details about the strata, stages and clusters should be included in the description of the audit plan.

6. *Estimate of Review Time per Sample Item*—The plan should estimate the time expended to locate the sample items and the staff hours expended to review a sample item.

7. *Characteristics Measure by the Sample*—The sampling plan should identify the characteristics used for testing each sample item. For example, in a sample drawn to estimate the value of overpayments due to duplicate payments, the characteristics under consideration are the conditions that must exist for a sample item to be a duplicate. The amount of the duplicate payment is the measurement of the overpayment. The sampling plan must also contain the decision rules for determining whether a sample item entirely meets the criterion for having characteristics or only partially meets the criterion.

8. *Missing Sample Items*—The sampling plan must include a discussion of how missing sample items were handled and the rationale.

9. *Other Evidence*—Although sample results should stand on their own in terms of validity, sample results may be combined with other evidence in arriving at specific conclusions. If appropriate, indicate what other substantiating or corroborating evidence was developed.

10. *Estimation Methodology*—Because the general purpose of the review is to estimate the monetary losses to the Federal health care programs, the methodology to be used must be variables sampling using the difference estimator. To estimate the amount implicated in the disclosed matter, the provider must use the mean point estimate. The statistical estimates must be reported using a ninety (90) percent confidence level. The use of RAT-STATS to calculate the estimates is strongly recommended.

11. *Reporting Results*—The sampling plan should indicate how the results will be reported at the conclusion of the review. In preparing the report, enough details must be provided to clearly indicate what estimates are reported.

D. Certification

Upon completion of the self-assessment, the disclosing health care provider, or in the case of an entity its authorized representative, must submit to the OIG a certification stating that, to the best of the individual's knowledge, the report contains truthful information and is based on a good faith effort to assist OIG in its inquiry and verification of the disclosed matter.

VI. OIG's Verification

Upon receipt of a health care provider's disclosure submission, the OIG will begin its verification of the disclosure information. The extent of the OIG's verification effort will depend, in large part, upon the quality and thoroughness of the internal investigative and self-assessment reports. Matters uncovered during the verification process, which are outside of the scope of the matter disclosed to the OIG, may be treated as new matters outside the Provider Self-Disclosure Protocol.

To facilitate the OIG's verification and validation processes, the OIG must have access to all audit work papers and other supporting documents without the assertion of privileges or limitations on the information produced. In the normal course of verification, the OIG will not request production of written communications subject to the attorney-client privilege. There may be documents or other materials, however, that may be covered by the work product doctrine, but which the OIG believes are critical to resolving the disclosure. The OIG is prepared to discuss with provider's counsel ways to gain access to the underlying information without the need to waive the protections provided by an appropriately asserted claim of privilege.

VII. Payments

Because of the need to verify the information provided by a disclosing health provider, the OIG will not accept payments of presumed overpayments determined by the health care provider prior to the completion of the OIG's inquiry. However, the provider is encouraged to place the overpayment amount in an interest-bearing escrow account to minimize further losses. While the matter is under OIG inquiry, the disclosing provider must refrain from making payment relating to the disclosed matter to the Federal health care programs or their contractors without the OIG's prior consent. If the OIG consents, the disclosing provider will be required to agree in writing that the acceptance of the payment does not constitute the Government's agreement as to the amount of losses suffered by the programs as a result of the disclosed matter, and does not affect in any manner the Government's ability to pursue criminal, civil or administrative remedies or to obtain additional fines, damages or penalties for the matters disclosed.

VIII. Cooperation and Removal from the Provider Self-Disclosure Protocol

The disclosing entity's diligent and good faith cooperation throughout the entire process is essential. Accordingly, the OIG expects to receive documents and information from the entity that relate to the disclosed matter without the need to resort to compulsory methods. If a provider fails to work in good faith with the OIG to resolve the disclosed matter, that lack of cooperation will be considered an aggravating factor when the OIG assesses the appropriate resolution of the matter. Similarly, the intentional submission of false or otherwise untruthful information, as well as the intentional omission of relevant information, will be referred to DOJ or other Federal agencies and could, in itself, result in criminal and/or civil sanctions, as well as exclusion from participation in the Federal health care programs.

Dated: October 21, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98–29064 Filed 10–29–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunities for Cooperative Research and Development Agreements (CRADAs) for the Joint Evaluation and Development of Methods to Generate and Expand In-Vitro Modified Dendritic Cell Populations in Order to Elicit Phenotype Specific Immune Responses

The NCI is looking for CRADA Collaborators to jointly develop this dendritic cell immunology technology.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice for CRADA opportunities.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or biotechnology companies to evaluate and develop methods to generate, expand and modify dendritic cells to act in an immunologically specific manner. The Collaboration will focus on the development and evaluation of conditions for specific immunomodulatory maneuvers focused on induction of Th1 and Tc1 biased immune responses by dendritic cells. Additionally, the collaboration will include the characterization of human dendritic cell phenotypic subsets including the generation of subset specific reagents. These research efforts would be directed by our evolving understanding of dendritic cell biology which includes both the characterization of cytokine expression by dendritic cells (production and regulation of production) and the characterization of dendritic cell responses to both known and as yet uncharacterized cytokines.

Any CRADA for the biomedical use of this technology will be considered. The CRADAs would have an expected duration of one (1) to five (5) years. The goals of the CRADAs include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborators will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADAs which are the subject of the CRADA Research Plan.

ADDRESSES: Statements of interest, proposals and questions about this CRADA opportunity may be addressed to Gary Cuchural, Technology Development & Commercialization Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820). Scientific inquiries may be addressed to Dr. Edward Nelson, Immunotherapy Laboratory, NCI Clinical Services Program, National Cancer Institute-Frederick Cancer Research & Development Center, phone: 301–846–1491; FAX: 301–846–6022.

EFFECTIVE DATE: Confidential CRADA statements of interest describing the proposed research, preferably one page or less, must be submitted to NCI on or before December 29, 1998. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents who have been selected on the basis of mutual scientific interest.

SUPPLEMENTARY INFORMATION:

Technology Available

The Immunotherapy Laboratory of the NCI Clinical Services Program at the Frederick Center Research and Development Center has expertise in the following technological areas:

- Experience generating frequent, large dendritic cell (DC) preparations.
- Experience generating in excess of 80 DC preparations, from both normal donors and cancer patients.
- Well established, extensive systems for functional and phenotypic evaluation of dendritic cell preparations and their responses to various immune mediators.
- Access to Good Manufacturing Practice (GMP) monoclonal antibody production facility.
- Established human tumor antigen systems for final functional evaluations of immune response.

NCI's Dendritic Cell Patents and Patent Applications:

1. A Method and Compositions for Making Dentritic Cells from Expanded Populations of Monocytes and for Activating T Cells, filed in the United States Patent and Trademark Office May 21, 1997.

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with data from in-vitro and in-vivo studies.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise and/or financial support for (e.g. facilities, personnel and expertise) CRADA related Government activities.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the licensing of patent rights to CRADA inventions.

Dated October 21, 1998.

Kathleen Sybert,

Acting Director, Technology Development & Commercialization Branch National Cancer Institute National Institutes of Health.

[FR Doc. 98–29074 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Cannabinoids As Neuroprotectants

A Hampson, J Axelrod, M Grimaldi (NIMH)
DHHS Reference Nos. E–287–97/0 filed 21 Apr 98 and E–287–97/1 filed 10 Aug 98
Licensing Contact: Stephen Finley, 301/496–7735 ext. 215

This technology describes the neuroprotective properties of cannabidiol (CBD), 2-[3-Methyl-6-(1-methylethenyl)-2-cyclohexen-1y1]-5-pentyl-1,3-benzenediol. Cannabidiol is a neuroprotective cannabinoid that does not possess the psychoactive qualities which have previously hampered the development of cannabinoid-based therapeutics. Cannabidiol is an effective blood-brain barrier permeable antioxidant, that is more potent than either tocopherol or ascorbate. As reported in PNAS 95, 8268–73 (July 1998), CBD can protect neurons from both glutamate and free radical induced toxicity. It is believed that CBD may present a viable alternative for treatment of ischemia or physical traumas. This technology is currently available for either licensing or collaborative efforts under a Cooperative Research and Development Agreement (CRADA).

Methods and Compositions for Inhibiting Inflammation and Angiogenesis

K Kelly (NCI)
PCT/US97/19772 filed 24 Oct 97 (claiming priority of USSN 60/027,871 filed 25 Oct 96)
Licensing Contact: Charles Maynard, 301/496–7735 ext. 243

The invention provides compositions and methods directed to isolated α subunits of the 7TM protein CD97. CD97 is a heterodimer existing in three isoforms, namely three forms of α subunit and one invariant β subunit. The invention provides compositions and methods for detecting a subunit of CD97, a T-cell protein which is upregulated in activated T-cells and is involved in the onset and maintenance of inflammation and angiogenesis. The invention provides an isolated protein comprising a soluble CD97 α subunit, and an isolated nucleic acid encoding a soluble CD97 α subunit protein. The invention also provides methods for identifying compounds which inhibit soluble CD97 α subunit expression. The invention may be used to inhibit angiogenesis associated with chronic inflammation in a mammal by administering a therapeutically effective amount of a CD97 antagonist. Another application includes determining the degree of inflammation at a site in a mammal with an antibody composition specifically reactive to a soluble CD97 α subunit. Further, it should be noted that these compositions and methods have in vitro utility in the construction of proteins and subsequences thereof for the construction of antibodies, and nucleic acids and subsequences thereof for use as probes.

Genetic Polymorphisms Of Interleukin-1 Alpha And Beta Associated With Early Onset Periodontitis

SR Diehl, HA Schenkein, YF Wang (NIDR)
Serial No. 09/035,220 filed 05 Mar 97
Licensing Contact: Dennis Penn, 301/496–7056 ext. 211

Periodontal disease occurs in 10–20% of adults, and constitutes a major cause of tooth loss. About 0.5% of U.S. adolescents between the ages of 14 to 17 years old (about 70,000) have localized early onset periodontitis and 0.1% (17,000) have the more destructive form known as generalized early onset periodontitis. Both types of early onset periodontitis often lead to tooth loss before the age of 20. Extrapolation of these figures up to age 35 leads to estimates of early onset periodontitis having a major impact on the dental health of 400,000 individuals in the U.S. population. Discovery of genetic polymorphisms at the interleukin 1 alpha and 1 beta genes significantly associated with disease risk allows genetic testing to be used to predict disease prior to onset. This can be used to target clinical efforts for disease prevention to those individuals at greatest risk. The genetic test can also justify more aggressive therapeutic treatments for individuals already affected by the early onset periodontitis who, based on their genetic profile, are predicted to exhibit very rapid disease progression.

Dated: October 24, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–29072 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: December 7–9, 1998.

Time: December 7, 1998, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Durham Hilton, 3800 Hillsborough Road, Durham, NC 27705.

Contact Person: FRANCISCO O. CALVO, PHD, Chief, S.E.P. Section, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37E, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29067 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–02, RFA DE97–002, P60s.

Date: November 18–19, 1998.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Dulles, Dulles Corner Blvd., Herndon, VA 20171.

Contact Person: YONG A. SHIN, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–08, Centers of Discovery.

Date: December 7–8, 1998.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Edgewater, 2411 Alaskan Way, Seattle, WA 98121.

Contact Person: H. George Hausch, PHD, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–13, P01 Review.

Date: December 9–10, 1998.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Edgewater, 2411 Alaskan Way, Seattle, WA 98121.

Contact Person: H. George Hausch, PHD, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29068 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 23, 1998.

Time: 2:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 3, 1998.

Time: 9:00 AM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW., Washington, DC 20037.

Contact Person: Ron Schoenfeld, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29069 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS Research Trial.

Date: November 5, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Melody Maryland, NIAMS, 45 Center Drive Rm. 5AS 25 U, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS SDRC Review.

Date: November 16–17, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Bethesda, MD 20017.

Contact Person: Melody Maryland, NIAMS, 45 Center Drive, Rm. 5AS 25U, Bethesda, MD 20892.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS 004–CCMD SEP.

Date: November 18–19, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Melody Maryland, NIAMS, 45 Center Drive, Rm. 5AS 25U, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29070 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1–3, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Loews Summit New York Hotel, New York, NY 10022.
Contact Person: Marjam G. Behar, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 1, 1998.
Time: 7:30 PM to 10:00 PM.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, Washington, DC 20037.
Contact Person: Bruce Maurer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 2.
Date: November 2–4, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.
Contact Person: H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2–3, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Houston Baker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2–3, 1998.
Time: 8:00 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.
Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2–3, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, Washington, DC 20037.
Contact Person: Bruce Maurer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2–3, 1998.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Gloria B. Levin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7848, Bethesda, MD 20892, (301) 435–1017.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2, 1998.
Time: 8:30 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Syed M. Quadri, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–8 (52).
Date: November 2, 1998.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call) .
Contact Person: Nadarajen Vydelingum, PHD, Scientific Review Administrator, Special Study Section-8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2, 1998.
Time: 2:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 2, 1998.
Time: 12:30 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Deniel B. Berch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7848, Bethesda, MD 20892, (301) 435–1256.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AARR–4 (01).

Date: November 3–4, 1998.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mohindar Poonian, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel (ZRG1 SSS–Z).

Date: November 4–5, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, Rockville, MD 20852.

Contact Person: Ron Manning, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Daniel B. Berch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7848, Bethesda, MD 20892. (301) 435–1256.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.

Date: November 4–5, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Pharmacology Study Section.

Date: November 5–6, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jeanne N. Ketley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4103, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Biological Sciences Subcommittee 2.

Date: November 5–6, 1998.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Anthony Carter, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Science Initial Review Group, General Medicine A Subcommittee 1.

Date: November 5–6, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: San Diego Paradise Point Resort, 1404 West Vacation Road, San Diego, CA 92109–7905.

Contact Person: Harold M. Davidson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1998.

Time: 1:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, EV__sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 1998.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 6, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (11).

Date: November 9, 1998.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AARR–03 01.

Date: November 9, 1998.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mohindar Poonian, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110 MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–AARR–7(01).

Date: November 10–11, 1998.
Time: 8:30 AM To 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRZ–AARR–03(01).
Date: November 10, 1998.
Time: 8:30 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Mohindar Poonian, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 AARR–2–(02).
Date: November 11, 1998.
Time: 7:30 PM to 10:00 PM.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6710 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29071 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Immunodeficiency Virus (HIV) ENV-Coded Peptide Capable of Eliciting HIV-Inhibiting Antibodies in Mammals

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, in contemplating the grant of a limited field of use exclusive world-wide license to practice the invention embodied in U.S. Patent No. 5,562,905, issued October 8, 1996 (U.S. Patent Application Serial No. 07/324,027, filed March 20, 1989), entitled ''Human Immunodeficiency Virus (HIV) ENV-Coded Peptide Capable of Eliciting HIV-Inhibiting Antibodies in Mammals'' and non-U.S. patent applications claiming priority to U.S. patent application SN 07/148,692 entitled ''Synthetic Antigen Evoking Anti-HIV Response'' to BioQuest, Inc. of Houston, Texas, U.S.A. These patent rights are either assigned or exclusively licensed to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before January 28, 1999 will be considered.

ADDRESSES: Requests for a copy of this issued patent or applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol A. Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7735 ext 232; Facsimile: (301) 402–0220; E-Mail: salatac@OD.NIH.GOV.

SUPPLEMENTARY INFORMATION: The patent describes the use of a chemically synthesized 15 amino acid peptide, designated peptide 1–69, which has the sequence of amino acids numbers 308 to 322 of the human immunodeficiency virus-1 (HIV–1) IIIB env-coded protein to immunize animals against HIV. Peptide 1–69 elicited antibodies in animals that block HIV proliferation and block HIV-induced cell fusion in cell culture.

It is anticipated that this license may be limited to the field of treatment or prevention of HIV using a specific 15 amino acid peptide (RIQRGPGRAFVTIGK).

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within 90 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 21, 1998.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–29073 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences, NIH; National Toxicology Program

Notice of workshop on ''Scientific Issues Relevant to Assessment of Health Effects from Exposure to Methylmercury'', November 18–20, 1998, at the Brownestone Hotel in Raleigh, North Carolina.

Background

At the request of the White House Office of Science and Technology an interagency committee has organized the subject workshop to discuss and evaluate the major epidemiological studies associating methylmercury exposure with an array of developmental measures in children. The organizing committee is chaired by the National Institute of Environmental Health Sciences, National Institutes of Health, with representatives from the Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, the Food and Drug Administration, the Department of Health and Human Services, the National Oceanic and Atmospheric Administration, the Office of Science and Technology Policy, and the Office of Management and Budget.

The major studies being considered at the workshop are those which have examined populations in Iraq and the Seychelles, the Faeore Islands, and the Amazon, along with the most relevant animal studies for estimating human risks. Workshop participants will try to reach consensus on what we can conclude and what the uncertainties are for each of the studies alone and for the studies taken together. The product of the workshop should be policy relevant and facilitate agreement on risk assessment issues.

Workshop Agenda

Scientists involved in the major studies will present and discuss their

studies. To help structure the workshop the following questions have been developed by the organizing committee and will be discussed with respect to each study:

1. For each study, what are the relative exposures to organic or inorganic mercury?

2. What are the sources of exposure? Is the consumption of fish, shellfish and marine mammals the dominant source? Are dental amalgams, occupational exposures or other sources significant confounders?

3. What is the specificity and sensitivity of health endpoints, e.g., behavioral, neurological, and developmental? What are the most specific and sensitive tests of these endpoints? How are these tests impacted by cultural or behavioral practices?

4. Are the developmental tests used comparable across different studies? Across species?

5. What are the confounders that affect health endpoints positively (e.g., selenium, omega-3 fatty acids) and negatively (e.g., PCBs; alcohol use; health conditions with neurological effects, such as diabetes)? Do they influence the interpretation of the study.

6. What is the variability within and across populations studied in mercury exposure and host factors (e.g., age, gender, nutritional status and practices, and genetic predisposition)?

7. For each epidemiological study of interest, which features of its statistical design, research protocol or execution in the field are particularly strong or weak? To what extent do these strengths and weaknesses affect the validity and reliability of scientific inferences based on these studies?

8. What are the contributions of animal or experimental studies toward interpretation of the human studies?

Organized panels will assess the presentations with respect to the questions above. A panel on exposure will assess and develop a report on questions 1 & 2; a neurobehavioral panel will assess and develop a report on questions 3 & 4; a panel on confounders and variables will address 5 & 6; and a panel on design/statistics will assess and report on question 7; question 8 will be addressed by the experimental panel.

Invited workshop participants will include scientists involved in the major studies, epidemiologists, pediatric neuropsychiatrists, developmental biologists, toxicologists, biomathematicians, biomonitoring specialists and scientists who are skilled at integrating diverse data sets, as well as representatives from Federal and State agencies who are involved in assessing risks from methylmercury exposure.

A public comment session will provide the opportunity for additional views and comments. Oral presentations will be limited to 5 minutes in length to allow for a maximum number of presentations. Written statements should supplement and may expand on the oral presentation. Written comments may also be provided and should be submitted to the NTP Liaison & Scientific Review Office, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 and must be received by November 9, 1998, to be transmitted to the workgroups prior to the workshop.

The Preliminary Schedule Follows

Wednesday, November 18, 1998

8:30 am–6:00 pm Presentation and Discussion of Each Epidemiology Study and a Presentation and Discussion of the major animal or experimental studies

Thursday, November 19, 1998

8:30 am–Noon Moderators will lead panel discussions addressing each of the 8 questions in the general session

1:00 pm–2:00 pm Public Comment Session

2:00 pm–6:00 pm Panels develop recommendations and conclusions in separate breakout groups

Friday, November 20, 1998

8:30 am–Noon Each panel will make a summary presentation on their assessment of the assigned questions

Noon Overview and Summary

1:00 pm Adjourn

Public Participation Encouraged

The general sessions and the breakout groups are open to the public and limited only by the space available. A public comment session is scheduled as described above. Oral and/or written comments are requested as discussed above.

Registration

To register, please provide the following information: to the Workshop on ''Scientific Issues Relevant to Assessment of Health Effects from Exposure to Methylmercury''.

''Scientific Issues Relevant to Assessment of Health Effects from Exposure to Methylmercury''

(Open to the public, limited only by space available)

Brownestone Hotel, Raleigh, NC, November 18–20, 1998

(Please type or print clearly)

_____

Last Name First Name Middle Initial

_____

Institution Department

_____

Address City State Zip Code

_____

Office Phone FAX Number Email Address

Please mail or fax your registration, no later than November 6, 1998 to:

NTP Liaison & Scientific Review Office, NTP/NIEHS, P.O. Box 12233, MD: A3–01, Research Triangle Park, NC 27709, fax: (919) 541–0295

I am interested in observing the following break-out group discussion: ''Breakout'' Panel Sessions: (Please mark first and second choices)

1. Exposure Panel _____
2. Neurobehavioral Endpoints Panel _____
3. Confounders & Variables Panel _____
4. Design/Statistics Panel _____
5. Experimental Panel _____

Public Comment Session:

I would like to make an oral presentation during the Public Comment Session_____

(limit to 5 minute oral presentation, written statements should supplement and may expand on the oral presentation)

A registration fee of $50.00 (US) is requested. Credit cards cannot be accepted. Personal checks, cashier checks or money orders made payable to: *Methylmercury Workshop* should be included with your registration. For those faxing registration, please indicate the date the registration fee is being fowarded by mail.

Accomodations

Hotel reservations can be made directly with the Brownestone Hotel (919) 828–0811. A block of rooms is being held through October 30, 1998. Identify yourself as attending the NIEHS Methylmercury Workshop.

Dated: October 21, 1998.

Samuel H. Wilson, M.D.,

Deputy Director, NIEHS

[FR Doc. 98–29075 Filed 10–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4375–N–04]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 29, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451—7th Street, SW, Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Quarterly Loan Level Reporting

OMB Control Number, if applicable: 2503–0026

Description of the need for the information and proposed use: The Quarterly Loan Level Reporting data is necessary to monitor the risk of over $500 billion of federally insured mortgage-backed securities. The collection of loan level data gives management a more complete understanding of the nature and trend of Ginnie Mae's portfolio of securities, as well as a more detailed understanding of each of the individual issuer portfolios.

Agency form numbers, if applicable: not applicable

Members of affected public: For-profit businesses (mortgage companies, thrifts, savings & loans, etc.)

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Respondents	Frequency of response	Total annual responses	Total hours
Ginnie Mae Issuers	396	4	1,584	6,336

Status of the proposed information collection: This is a reinstatement of a previously approved collection of information for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 22, 1998.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 98–29066 Filed 10–29–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–33]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 22, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–28778 Filed 10–29–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of the Secretary's Decision to Assume Jurisdiction and Review United States v. United Mining Corporation, and to Accept Briefs From Interested Parties

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: Pursuant to a petition and a letter requesting Secretarial review, the Secretary of the Interior has decided to exercise his authority as set forth in 43 CFR 4.5 to review **United States v. United Mining Corporation (United Mining),** 142 IBLA 339 (1998), a decision that raises important mining law issues arising under the Building Stone Act. Of particular importance in this matter is the meaning of the phrase ''chiefly valuable'' in that statute.

In order to undertake his review, the Secretary will accept briefs on the issues set forth in the Supplementary Information according to the schedule and instructions in that portion of this Notice.

Pending conclusion of the Secretary's review of this matter, the decision of the IBLA is stayed.

DATES: See Supplementary Information section for the Brief submission schedule.

ADDRESSES: Briefs from interested parties should be submitted to the Office of the Solicitor at the United States Department of the Interior, 1849 C Street, NW., Mail Stop 6352, Washington, DC. 20240. Briefs should be marked for the attention of Miriam Chapman, Attorney-Advisor, Division of General Law, Office of the Solicitor.

FOR FURTHER INFORMATION CONTACT: Karen Maloy Sprecher, Associate Solicitor–Division of General Law, Office of the Solicitor, United States Department of the Interior, 1849 C Street, NW., Mail Stop 6530, Washington, DC. 20240; telephone 202–208–4722. Before filing briefs, parties should contact Miriam Chapman, Attorney-Adviser, Division of General Law, by telephone at 202–208–5216, for information concerning service of process. Parties that have already filed briefs and other documents will be contacted regarding any additional service requirements.

SUPPLEMENTARY INFORMATION: In February 1992, United Mining Corporation (United Mining) located 14 KB placer claims (placer claims) along sections of the Big Wood River channel in Idaho and filed location notices with the Bureau of Land Management (BLM). United Mining proposed to remove Holystone boulders (large basalt boulders that have been naturally water-sculpted over time) from the area.

In response to United Mining's demonstrated interest in the Holystone boulders, BLM performed an environmental assessment of the proposed removal. BLM's examiners determined that the Holystone boulders in the Big Wood River area comprised a unique geological resource and therefore recommended that the placer claims be invalidated.

On March 8, 1993, United Mining submitted a notice advising the BLM of its intent to conduct mining on the placer claims. BLM filed a contest complaint (a complaint contesting United Mining's plan) on March 11, 1993, which was assigned to Administrative Law Judge Ramon Child, and BLM issued a March 17, 1993, decision prohibiting mining and the removal of stone pending the outcome of the contest proceeding.

Judge Child conducted a hearing on April 4 and 5, 1994, in Idaho. At the hearing, BLM argued that the Holystone boulders in the Big Wood River area were a great natural wonder with unique geological attributes. BLM also argued that the land in question was not chiefly valuable for building stone, but for aesthetic purposes. Therefore, BLM concluded, mining should not be permitted as the land does not fall within the purview of the Building Stone Act, 30 U.S.C. 161 (1994) (Building Stone Act), which provides, in pertinent part: ''any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of law in relation to placer mineral claims.''

United Mining moved to dismiss BLM's complaint and presented evidence of the uncommon nature of the Holystone boulders, the existence of Holystone boulders of a marketable quality at each claim and the estimated prices for the Holystone boulders. United Mining contended that their submission clearly demonstrated that the land was chiefly valuable for building stone.

In a November 1, 1994, decision, Judge Child first concluded that the Holystone boulders were building stone within the meaning of the Building Stone Act, and that the placer claims were subject to that Act. *See* 142 IBLA at 352. Since the Holystone boulders were building stone, there would have to be a determination as to whether the land in the Big Wood River area was ''chiefly valuable'' for building stone. Having concluded the Building Stone Act applied, Judge Child proceeded to consider whether the comparative value of the claimed land for purposes other than mining (hereafter the comparative value test) was relevant under the general mining laws. Noting that although the Department had rejected the use of comparative value in recent decisions, the Judge determined that early Department decisions, Supreme Court decisions and Congressional Acts favored the application of the comparative value test under the 1872 General Mining Law, 30 U.S.C. 22 (1994) (Mining Law). *See* 142 IBLA at 352. He further concluded that for any mining claim to be valid, the land must be more valuable for mining than for other purposes.

Judge Child compared the building stone with the aesthetic and geological resources of the land in the Big Wood River area. He rejected United Mining's contention that a lack of evidence of the value of the land for aesthetic and geological purposes precluded a finding that the land was more valuable for such purposes. Noting that it was impossible to place a monetary value on irreplaceable geological features, Judge Child concluded that the land was more valuable for geological and aesthetic purposes and therefore not subject to mining claims under the Building Stone Act. *See* 142 IBLA at 353.

United Mining appealed Judge Child's decision to the Interior Board of Land Appeals (IBLA), arguing that the Building Stone Act did not govern the placer claims. In its decision on appeal, a 6–4 majority of the IBLA, including a concurring opinion, found the Holystone boulders subject to the Building Stone Act. 142 IBLA 339 (1998). Finding that the placer claims were properly located as building stone placer claims, the IBLA found it unnecessary to revisit whether the comparative value test applies to claims located under the Mining Law and vacated that portion of Judge Child's decision. The IBLA then proceeded to address what the drafters of the Building Stone Act intended when employing the term ''chiefly valuable.'' The IBLA determined that the term was used in the context of statutes designed to dispose of public lands in a manner that ensured land was suitable for an intended purpose, namely agriculture or mining. The IBLA relied on *Pacific Coast Marble Co. v. Northern Pacific R.R. Co.*, 25 Interior Dec. 233, 244–45 (1897) *(Pacific Coast)*, as representative of the Department's view. *Pacific Coast* states in part:

> That whatever is recognized as a mineral by the standard authorities on the subject, whether metallic or other substance, when the same is found on the public lands in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, should be treated as coming within the purview of the mining laws.

Applying the *Pacific Coast* standard, the IBLA found that ''[a]n evaluation strictly on the basis of the land's 'aesthetic' and 'geological' worth with no regard to its worth for agricultural purposes does not comport with the intent of Congress when it enacted the Building Stone Act, 30 USC 161 (1994), or with the Department's clearly stated interpretation of that Act since that time.'' 142 IBLA at 372. The IBLA then concluded that the term ''chiefly valuable''

> contemplates a rational comparison of values, and the measurement of those values must be quantifiable, using units of measurement applicable to both sides of the equation. Accepting an unquantifiable statement of value, such as a conclusion that the land is 'unique,' or 'priceless,' or 'irreplaceable,' for one use and then demanding a value of the same land quantified in a dollar amount for the other use would render any decision arbitrary.

Id. at 372–73. The IBLA held that Judge Child's ''chiefly valuable'' analysis was erroneous because it

compared an unquantifiable statement of value (that the land was ''unique'' or ''priceless'' or ''irreplaceable'') for one use (preservation of the land for public purposes) against a value of the same land quantified in a dollar amount for the other use (building stone) and reversed that portion of the Judge Child's decision. *Id.* at 373.

Four dissenting administrative judges noted that the language of the Building Stone Act, which requires that lands be ''chiefly valuable for building stone,'' does not preclude taking aesthetic and geological values into account. 142 IBLA at 379–86. Moreover, in his dissent, Administrative Judge Arness noted that the lead and concurring opinions' assumption that the relevant inquiry is made under an historical understanding that only agricultural and mineral values are compared was incorrect, as nothing in the statute creates such a limitation, nor has the Department promulgated regulations to such effect. Further, Administrative Judge Arness wrote that instead of making the comparisons required by the Building Stone Act, the majority imposed a marketability test on the Department and shifted the burden of persuasion from United Mining to the government. Finally, Administrative Judge Arness noted that such an approach is inconsistent with the Building Stone Act and prior Departmental practice. 142 IBLA 383–86.

On April 28, 1998, the Secretary of the Interior (Secretary) received a Petition dated April 24, 1998, from the Committee for Idaho's High Desert and the Connecting Point for Public Lands (Intervenors), requesting that the Secretary render a final decision overturning the IBLA and reinstating the findings of Judge Child. Specifically, the Intervenors asked the Secretary to affirm Judge Child's holding regarding the Mining Law, particularly his affirmation of the comparative value test for mining claim validity. On May 11, 1998, the Secretary received a letter dated May 7, 1998, authored jointly by representatives of American Rivers, the Mineral Policy Center, the National Wildlife Federation and the Sierra Club. These groups also requested the Secretary's affirmation of the comparative value test. On June 8, 1998, the National Mining Association filed a Motion For Leave to File an Amicus Curiae Brief with the Secretary. Accompanying the motion were the National Mining Association's amicus brief in opposition to the petition for secretarial review and copies of two amicus briefs that had been filed by several amici in the *United Mining* IBLA proceeding in support of United Mining. The motion and brief were received on June 10, 1998. The National Mining Association supports the IBLA decision. By letter dated June 10, 1998, the Intervenors filed a reply brief.

Recognizing the importance of the issues raised by the IBLA decision and the differences in the views of the members of the IBLA, the Secretary has decided to review the IBLA decision pursuant to regulations which provide:

> The authority reserved to the Secretary includes, but is not limited to:
>
> * * * * *
>
> (2) The authority to review any decision of any employee or employees of the Department, including any administrative law judge or board of the Office [of Hearings and Appeals], or to direct any such employee or employees to reconsider a decision.
>
> 43 CFR 4.5 (Bracketed material added.)

To assist him in rendering a decision on this matter, the Secretary will accept briefs from interested parties. Briefs should address the following issues: (1) Whether the term ''chiefly valuable'' as used in the Building Stone Act requires an assessment of comparative values and whether those values could include values other them agricultural, e.g., scenic, historic, recreational, and scientific; (2) whether the Mining Law itself incorporates a requirement that there be an assessment of comparative values; and (3) assuming issue (1) is answered in the affirmative, whether the Building Stone Act was meant to create a new comparative value standard only for building stone, or whether Congress meant instead to confirm that comparative value was part of the Mining Law; i.e., was inclusion of ''chiefly valuable'' in the Building Stone Act meant to incorporate or confirm a pre-existing rule under the Mining law, or create a new, different rule for building stone? The Secretary's review of this issue will address the teachings of other laws, if relevant, e.g., the Mineral Leasing Act, 30 U.S.C. 481, et seq. (1994).

In reviewing the matter, the Secretary will consider the petition and letters seeking reversal of the IBLA decision, as well as other briefs that already have been filed in support of the IBLA decision, as opening briefs on this subject and will accept additional briefs (including amicus briefs) in opposition to, and in favor of the petition and letters, from interested parties.

Briefs must be submitted according to the following schedule:

1. Briefs opposed to the petition and letter seeking Secretarial review (i.e., briefs in support of the IBLA decision) must be received by December 4, 1998, and my not exceed 50 pages in length;

2. Response briefs by Petitioners (Intervenors) and others opposing the IBLA decision must be received by January 22, 1999, and are limited to a length of 25 pages; and

3. Reply briefs from opponents must be received by February 19, 1999, and are also subject to a 25-page limit.

All briefs must be double-spaced and use the times Roman font and 12-point type. No oral argument will be heard on these issues.

BLM, as a party in this matter, will be represented by the Division of Mineral Resources of the Office of the Solicitor. In order to assure that appropriate ethical standards are observed, all BLM participation in this matter will be through the Division of Mineral Resources in accordance with the provisions of this Notice.

Pending conclusion of the Secretary's review of this matter, the decision of the IBLA is stayed.

Dated: October 22, 1998.

Edward B. Cohen.

Deputy Solicitor.

[FR Doc. 98–29146 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Informational Meeting on Section 1115 of the Transportation Equity Act for the 21st Century (TEA–21)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Department of the Interior is giving notice of its intention of holding an informational meeting to share information about the regulatory negotiating process in Section 1115 of the Transportation Equity Act for the 21st Century (TEA–21), concerning the Indian Reservation Roads program's regulations and funding formula.

DATES: The public meeting will be held on Monday, November 16, 1998, beginning at 9:00 a.m. and ending at 3:30 p.m. MST.

ADDRESSES: The meeting will be held at the Sheraton Uptown Albuquerque Hotel, 2600 Louisiana Boulevard, NE, Albuquerque, NM 87110, (505) 881–0000.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, Department of the Interior, MS–4058–MIB, 1849 C Street, NW, Washington, DC 20240, (202) 208–4359, Fax (202) 208–4696.

SUPPLEMENTARY INFORMATION: TEA–21 significantly amended numerous provisions of title 23, United States Code, including section 202. Under amended section 202 (section 1115 of TEA–21), the Secretary of the Interior shall establish regulations governing the Indian Reservation Roads program and the funding formula using the negotiated rule making procedure.

For those not able to attend, information will be available on the Indian Reservation Roads Internet website on the World Wide Web at *http://www.irr.bia.gov* or at the Federal Lands Highways Office Internet website at *http://www.fhwa.dot.gov/lands.html* five days after the public meeting.

Scope of the National Public Meeting

The scope of the national public meeting is to share information with tribal governments, tribal organizations, individual tribal members and the public, about the regulatory negotiating process.

Dated: October 26, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98–29150 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1040–00]

Intent to prepare four Riparian Habitat Management Plans and Associated Environmental Impact Statements (HMPs/EISs)

The HMPs/EISs will be prepared on the riparian areas in the following locations: (1) Farmington Field Office, (2) Mimbres planning area of the Las Cruces Field Office, (3) Rio Puerco area of the Albuquerque Field Office and (4) Taos Field Office.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare four Riparian Habitat Management Plans and Environmental Impact Statements (HMPs/EISs) and invitation to participate in the developing the Habitat Management Plans and the Environmental Impact Statement process.

SUMMARY: The Bureau of Land Management is initiating the preparation of four Riparian Habitat Management Plans and Environmental Impact Statements (HMPs/EISs). This action will be located in the following four areas in New Mexico: locations: (1) Farmington Field Office, (2) Mimbres planning area of the Las Cruces Field Office, (3) Rio Puerco area of the Albuquerque Field Office and (4) Taos Field Office. The proposed dates for public scoping meetings are included herein.

DATES: Written comments regarding proposed issues to be addressed in developing the draft HMPs/EISs must be submitted by December 9, 1998. In addition to the written comments seven public scoping meetings will be held. See below for locations, dates and times.

ADDRESSES: Comments should be sent to the following locations.

(1) Farmington Field Office, Farmington HMP/EIS Team Leader, 1235 La Plata Highway, Farmington, NM 87401–1808

(2) Las Cruces Field Office, Mimbres HMP/EIS Team Leader, 1800 Marquess Street, Las Cruces, NM 88005–3371

(3) Albuquerque Field Office, Rio Puerco HMP/EIS Team Leader, 435 Montano Road, NE, Albuquerque, NM 87107–4935

(4) Taos Field Office, Taos HMP/EIS Team Leader, 226 Cruz Alta Road, Taos, NM 87571–5983

FOR FURTHER INFORMATION CONTACT:

(1) Farmington Field Office-Bob Moore-505–599–6311.

(2) Las Cruces Field Office-Bill Merhege-505–525–4369.

(3) Albuquerque Field Office-Jim Silva-505–761–8901.

(4) Taos Field Office-Pam Herrera-505–751–4705.

Public Meetings: The public is invited to attend seven public scoping meetings to identify issues to be considered in the preparation of the four Riparian Habitat Management Plans and Environmental Impact Statements (HMPs/EISs). The meetings will be held at the following locations:

Town	Date/Time	Location
Farmington ...	November 17, 1998 at 7:00 pm.	Civic Center, 200 West Arrington Farmington, NM.
Las Cruces ...	November 17, 1998 at 7:00 pm.	Lordsburg Civic Center, 313 East 4th, Lordsburg, NM.
	November 18, 1998 at 7:00 pm.	Las Cruces Field Office, 1800 Marquess, Las Cruces, NM.
Albuquerque	November 17, 1998 at 7:00 pm.	Albuquerque, Field Office, 435 Montano NM, Albuquerque, NM.
	November 18, 1998 at 7:00 pm.	Cuba High School Cafeteria, Cuba, NM.
Taos	November 17, 1998 at 7:00 pm.	Taos Field Office, 226 Cruz Alta Road, Taos, NM.
	November 18, 1998 at 7:00 pm.	BLM-New Mexico State Office, 2nd Floor Conference Room, 1474 Rocteo Road, Santa Fe, NM.

SUPPLEMENTARY INFORMATION: The four Riparian Habitat Management Plans and Environmental Impact Statements (HMPs/EISs) are being prepared to provide comprehensive riparian and aquatic management guidance for the four named areas and as a result of a United States District Judge Court ordered settlement agreement, signed September 10, 1998. This Federal Court Order stipulated preparation of the four named Riparian Habitat Management Plans and Environmental Impact Statements (HMPs/EISs), Civil No. 96–0693 JP/LCS.

Planning Issues: Prior to scoping the following preliminary issues have been determined. They are use of riparian and aquatic habitat found with each area, competing demands for that habitat, recreation demands for that habitat, livestock grazing on the habitat, and mineral development within the habitat. During the scoping period comments will also be accepted concerning planning criteria. At the conclusion of the scoping process final issues and planning criteria for each of the four different locations will be developed.

Public Participation: Public participation will include consultation with affected users and other agencies, meetings with interested groups and individuals, media notices, Federal Register Notices, public meetings and distribution of the draft and final HMPs and EISs. A complete record of each of the four HMPs/EISs will be available for

public review at their respective Field Office locations.

Dated: October 27, 1998.

Linda S.C. Rundell,

Acting Deputy State Director, Division of Resources Planning, Use and Protection.

[FR Doc. 98–29099 Filed 10–30–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
ATP Oil and Gas Corporation, Pipeline Activity, SEA No. G–18810A.	Garden Banks Area, Blocks 133 and 134; East Breaks Area, Block 173; and High Island Area, East Addition, South Extension, Blocks A–595, A–596, A–401, and A–400; Lease OCS–G 18810; 135 miles south of Galveston Island, Texas.	08/26/98
Texaco Exploration and Production, Inc., Pipeline Activity, SEA No. G–19672A.	Main Pass Area, South and East Addition, Block 252; Viosca Knoll Area, Block 786; Lease OCS–G 19672, 67 miles south of Baldwin County, Alabama.	07/07/98
Exxon U.S.A., Pipeline Activity, SEA Nos. G–20527 and G–20528.	Mobile Area, Blocks 867, 823, and 824; Mobile Bay Area, Block 112; Leases OCS–G–20527 and 20528, 4 to 8 miles south of Dauphin Island, Mobile County, Alabama.	09/27/98
Dauphin Island Gathering Partners, Pipeline Activity, SEA No. G–20538.	Main Pass Area, South and East Addition, Blocks 256, 252, 251, 222, and 223, Lease OCS–G 20538, 55 miles south Baldwin County, Alabama.	07/23/98
Amoco Production Company, Pipeline Activity, SEA No. G–20541.	Main Pass Area, South and East Addition, Blocks 281 to 245, Lease OCS–G 20541, 65 miles south of Mobile County, Alabama.	08/18/98
Destin Pipeline Company, L.L.C., Pipeline Activity, SEA Nos. G–20542, G–20543, and G–20544.	Main Pass Area, South and East Addition, Blocks 284, 283, 279, 280, 281, 282, 261, and 260, Leases OCS–G 20542, 20543, and 20544, 38 to 48 miles south of Jackson County, Mississippi.	08/27/98
Destin Pipeline Company, L.L.C., Pipeline Activity, SEA No. G–20547.	Viosca Knoll Area, Blocks 900, 901, 902, 858, 859, 815, 816, 817, 818, 774, and 775; Main Pass Area, South and East Addition, Blocks 286, 285, and 284; Lease OCS–G 20547, 74 to 86 miles south of Jackson and Mobile Counties, Alabama.	08/27/98
AOA Geophysics Inc., G&G Activity, SEA No. T98–27	Garden Banks and Keathley Canyon Areas, 130 miles south of Cameron and Vermilion Parish, Louisiana.	09/03/98
Exxon U.S.A., Development Activity, SEA No. N–6131	Alaminos Canyon Area, Blocks 25 and 26, Leases OCS–G 10388 and 10381, 167 miles south of Galveston County, Texas.	07/08/98
Texaco Exploration and Production, Inc., Development Activity, SEA No. N–6152.	Mississippi Canyon Area, Block 292, Lease OCS–G 8806, 32 miles southeast of Plaquemines Parish, Louisiana.	08/18/98
Chevron U.S.A., Exploration Activity, SEA No. N–6171	Viosca Knoll Area, Block 346, Lease OCS–G 15428, 32 miles south of Baldwin County, Alabama.	08/18/98
Water Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 98–012A.	Galveston Area, Block 350, Lease OCS–G 4721, 38 miles south of Galveston County, Texas.	08/20/98
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 98–035 and 98–036.	Vermilion Area, Block 245, Lease OCS–G 1146, 66.7 miles from the nearest shoreline at Vermilion Parish, Louisiana.	08/20/98
Newfield Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 98–056.	East Cameron Area, Block 67, Lease OCS–G 0161, 22 miles south of Cameron Parish, Louisiana.	08/25/98
Mitchell Energy Corporation, Structure Removal Operations, SEA Nos. ES/SR 98–058 through 98–060.	Galveston Area, Block 189, Lease OCS 0092, 12 miles south of Galveston County, Texas.	05/27/98
Cockrell Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 98–063 and 98–064.	Vermilion Area, Block 202, Lease 14409; East Cameron Area, Block 201, Lease OCS–G 11838; 55 and 57 miles south of Vermilion.	08/10/98
OEDC Exploration & Production, L.P., Structure Removal Operations, SEA No. ES/SR 98–065.	Vermilion Area, Block 250, Lease OCS–G 1149, 64 miles south of Vermilion Parish, Louisiana.	08/31/98
Texaco Exploration and Production Inc., Structure Removal Operations, SEA Nos. ES/SR 98–066 and 98–067.	South Marsh Island Area, Blocks 212 and 222, Lease OCS 0130, 11 miles southeast of Vermilion Parish, Louisiana.	08/31/98
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 98–068.	Eugene Island Area, Block 64, Lease OCS–G 1865, 16 miles south of St. Mary's Parish, Louisiana.	09/25/98
Louisiana Land & Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–068S.	Ship Shoal Area, Block 358, Lease OCS–G 12009, 69 miles south of Terrebonne Parish, Louisiana.	07/13/98
Seagull Energy, E&P Inc., Structure Removal Operations, SEA No. ES/SR 98–070.	South Marsh Island Area, Block 70, Lease OCS–G 12893, 62 miles south of Vermilion Parish, Louisiana.	07/15/98

Activity/Operator	Location	Date
CNG Producing Company, Structure Removal Operations, SEA Nos. ES/SR 98–071 through 98–074.	West Cameron Area, Blocks 225, 229, Leases OCS–G 900 and 902, 38 miles south of Cameron Parish, Louisiana.	08/12/98
Samedan Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98–075.	Main Pass Area, Block 209, Lease OCS–G 5717, 45 miles east of Plaquemines Parish, Louisiana.	07/24/98
Stone Energy, Structure Removal Operations, SEA No. ES/SR 98–076.	Vermilion Area, Block 131, Lease OCS 0775, 32 miles south of Vermilion Parish, Louisiana.	09/24/98
Barrett Resources Corporation, Structure Removal Operations, SEA No. ES/SR 98–077.	Vermilion Area, Block 148, Lease OCS–G 8667, 36 miles south of Vermilion Parish, Louisiana.	08/12/98
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98–078.	Eugene Island Area, Block 307, Lease OCS–G 1980, 67 miles southwest of Terrebonne Parish, Louisiana.	09/03/98
Vastar Resources, Inc., Structure Removal Operations, SEA No. ES/SR 98–079.	West Delta Area, Block 133, Lease OCS–G 1106, 22 miles southwest of Plaquemines Parish, Louisiana.	08/25/98
The Houston Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–080.	Galveston Area, Block 297, Lease OCS–G 12501, 22 miles southeast of Galveston County, Texas.	10/01/98
Mariner Energy, Inc., Structure Removal Operations, SEA No. ES/SR 98–081.	South Timbalier Area, Block 173, Lease OCS–G 4001, 37 miles south of Terrebonne Parish, Louisiana.	10/15/98

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT:

Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: October 23, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–29100 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; National Capital Memorial Commission Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 1:30 on Tuesday, November 10, 1998, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, D.C.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the agenda is expected to include the following:

I. Consultation: Memorial proponents will consult with the Commission on aspects of these authorized memorials:

A. Site selection alternatives for the Martin Luther King, Jr., Memorial in West Potomac Park at the east end of Constitution Gardens; Hockey Fields; Franklin Delano Roosevelt Memorial Park playing fields adjacent to Independence Avenue at Ohio Drive; sites between Raoul Wallenberg Place, the Tidal Basin and Independence Avenue; and sites along East Capitol Street between 19th Street and Kennedy Stadium.

B. Site selection alternatives and design concepts for the Fourth Infantry Division memorial along Memorial Drive in Arlington, Virginia.

The Commission will consider these matters and take action as appropriate in order to advise the Secretary of the Interior (the Secretary).

II. Review of Legislation: The Commission will review the following legislative proposal:

(A) Memorial to Mr. Benjamin Banneker as currently proposed by H.R. 3499.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, D.C., and its environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: October 19, 1998.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 98–29184 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History, New York City, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History, New York City, NY which meets the definition of ''object of cultural patrimony'' under Section 2 of the Act.

The cultural item is a wampum string in two pieces. The shell beads alternate white and purple, except at one end of the longer strand, which is made up of the purple wampum interspersed at two places with a single white bead, and with a third white bead at the end.

In 1910, the American Museum of Natural History purchased this wampum string from Mr. Erastus Tefft as part of his collection. Mr. Tefft had acquired the string from Mr. M.R. Harrington. According to the Museum's documentation, Mr. Harrington had acquired this wampum string from Mr. Dan Webster in Oneida, NY. The Museum's records state that this wampum string was ''said to represent the office of a chief in the Turtle Clan.''

Based on the Museum's records and consultation with representatives of the Oneida Nation of New York, this wampum string is affiliated with the Oneida Nation of New York. Consultation evidence presented by representatives of the Oneida Nation of New York also indicates that this item has ongoing historical, traditional, and cultural importance central to the Tribe itself, and no individual had the right to alienate it. The Museum's review of this information indicates that it is accurate.

Based on the above mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the Tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Oneida Nation of New York.

This notice has been sent to officials of the Oneida Nation of New York and the Oneida Tribe of Wisconsin. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martha Graham, Registrar of Cultural Resources, American Museum of Natural History, Department of Anthropology, Central Park West at 79th Street, New York, NY 10024-5192; telephone: (212) 769-5846 before November 30, 1998. Repatriation of this object to the Oneida Nation of New York may begin after that date if no additional claimants come forward.

Dated: October 22, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–29094 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA and the Plimoth Plantation, Plymouth, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA and the Plimoth Plantation, Plymouth, MA.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology and Plimoth Plantation professional staff in consultation with representatives of the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head; and the Mashpee Wampanoag and the Assonet Band of the Wampanoag Nation, two non-Federally recognized Indian groups.

In 1934, human remains representing two individuals were recovered in Plymouth, MA by Henry and Ralph Hornblower and Jesse Brewer on property owned by the Hornblowers adjacent to the Eel River. Also in 1934, these human remains were transferred to the Peabody Museum of Archaeology and Ethnology. No known individuals were identified. The five associated funerary objects include a triangular brass projectile point with attached sinew, a box of yellow ochre, a Native-made ceramic sherd, and two bark containers. During the 1950s, these objects were donated to the Plimoth Plantation by Harry Hornblower.

The documentation associated with the objects indicates these objects were associated with the human remains from the Hornblower property at the Peabody Museum of Archaeology and Ethnology. Based on the presence of the brass projectile point, the burials have been estimated to date to the early historic period or later, post 1600 A.D. Historic documents (including the 1606 Champlain Map of Port Saint Louis) and oral tradition indicate the presence of Wampanoag in this area during this time. The Eel River in Plymouth, MA is located within the traditional territory of the Wampanoag during the early historic period.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology and the Plimoth Plantation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology and the Plimoth Plantation have also determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology and the Plimoth Plantation have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head; and the Mashpee Wampanoag and the Assonet Band of the Wampanoag Nation, two non-Federally recognized Indian groups.

This notice has been sent to officials of the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head; and the

Mashpee Wampanoag and the Assonet Band of the Wampanoag Nation, two non-Federally recognized Indian groups. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 02138; telephone: (617) 496-2254; and/or Karin Goldstein, Curator of Original Collections, Plimoth Plantation, PO Box 1620, Plymouth, MA 02362; telephone (508) 746-1622, ext. 379, before November 30, 1998. Repatriation of the human remains and associated funerary objects to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head; and the Mashpee Wampanoag and the Assonet Band of the Wampanoag Nation, two non-Federally recognized Indian groups may begin after that date if no additional claimants come forward.

Dated: October 22, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–29093 Filed 10–29–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of controlled substances Notice of Registration

By Notice dated July 17, 1998, and published in the **Federal Register** on August 6, 1998, (63 FR 42064), Applied Science Labs, Inc., A division of Altech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Morphine (9300)	II

The firm plans to import these controlled substances for the manufacture of reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Applied Science Labs, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 19, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–29061 Filed 10–29–98; 8:45 am]

Billing Code 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 10, 1998, and published in the **Federal Register** on July 9, 1998, (63 FR 37137), Arenol Pharmaceutical, Inc., which has changed its address to 2820 North Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration, (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

This firm plans to manufacture listed controlled substances to produce pharmaceutical products for its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Arenol Pharmaceutical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Arenol Pharmaceutical, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 19, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–29062 Filed 10–29–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–23]

Bradford's Pharmacy Conditional Grant of Registration

On June 16, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bradford's Pharmacy (Respondent) of Estill Springs, Tennessee, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a retail pharmacy pursuant to 21 U.S.C. 823(f), for reason that its registration would be inconsistent with the public interest. By letter dated July 12, 1997, Respondent, with counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Nashville, Tennessee on November 18, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument.

On May 28, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's application for registration be granted. Neither party filed exceptions to the Administrative Law Judge's recommended decision, and on June 29, 1998,. Judge Randall

transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that James R. Bradford [1] is a licensed pharmacist and the owner of Respondent pharmacy. In 1989, Mr. Bradford owned and operated Prince Drug Store in Winchester, Tennessee. An investigation of Prince Drug Store was conducted in March 1989. During a routine compliance inspection by the Tennessee Board of Pharmacy (Pharmacy Board), it was noted that there was an excessive amount of telephone prescriptions for controlled substances. An investigator contacted some of the physicians whose names appeared on the prescriptions and learned that the physicians had not authorized the prescriptions. As a result, Mr. Bradford was arrested on May 2, 1989.

On June 15, 1989, investigators obtained more records from Respondent. After interviewing approximately 20 physicians, the investigators calculated that Respondent dispensed over 60,000 dosage units of controlled substances between January 1, 1988 and June 15, 1989, that were not authorized by a physician. Of particular note, unauthorized prescriptions accounting for approximately 5,500 dosage units were dated after Mr. Bradford's arrest on May 2, 1989.

Mr. Bradford was indicted in the Franklin County Circuit Court in Tennessee on one count each of illegally dispensing drugs, failure to keep drug records, furnishing false and fraudulent records, and obtaining controlled substances by use of forged and altered prescriptions. On July 28, 1989, Mr. Bradford pled guilty to all four felony counts.

On August 3, 1989, DEA served an Order to Show Cause and Immediate Suspension of Registration on Prince Drug Store. At that time, Mr. Bradford voluntarily surrendered the pharmacy's DEA registration.

On September 27, 1989, Mr. Bradford, both individually and on behalf of Prince Drug Store, entered into an Agreed Final Order with the Pharmacy Board, whereby he agreed to the revocation of the pharmacy's license and his pharmacist license.

On November 17, 1989, Mr. Bradford was sentenced to two years in jail for each of the four felony counts, to be served concurrently. He served approximately six months in jail, and was released on probation. Mr. Bradford's probation officer testified at the hearing in this matter that after one year of probation, Mr. Bradford was discharged from active supervision. According to the probation officer, Mr. Bradford was ''an exceptional probationer,'' he has been rehabilitated, and he has not committed any further offenses.

The sheriff of Franklin County testified that while incarcerated, Mr. Bradford served as a trustee. Trustees have work assignments and are selected because they are believed to be trustworthy. In the sheriff's opinion, Mr. Bradford is rehabilitated.

On September 28, 1993, the Pharmacy Board entered a Consent Order reinstating Mr. Bradford's pharmacist license on condition that he perform 160 hours of internship within two-months of the order and that he complete 15 hours of continuing education. Mr. Bradford fulfilled these conditions, and his license was reinstated and placed on probation for five years. One term of the probation was that Mr. Bradford could not serve as the pharmacist in charge at a pharmacy, but after two years he could petition the Pharmacy Board to remove this restriction.

Upon reinstatement of his pharmacist license, a pharmacy submitted a request to DEA for a waiver of 21 CFR 1301.76(a), to permit Mr. Bradford to work at the pharmacy with access to controlled substances. In a letter dated February 6, 1995, this request was denied based upon the fact that Mr. Bradford would be unsupervised while working in the pharmacy.

On September 19, 1995, Mr. Bradford entered into another Consent Order with the Pharmacy Board whereby the previous Consent Order was modified and Mr. Bradford's authority to serve as a pharmacist in charge was reinstated. On January 2, 1996, Mr. Bradford opened Respondent and subsequently applied for a DEA registration for the pharmacy. In the application for registration, Mr. Bradford disclosed his criminal convictions and the actions against his previous DEA registration and sate licenses.

At the hearing before Judge Randall, Mr. Bradford acknowledged dispensing controlled substances without a physician's authorization and explained that he had difficulty saying ''no'' and that he did want to lose customers. Mr. Bradford testified that he takes full responsibility for his actions, specifically stating that:

> I left James R. Bradford of '88 and '89 in Franklin County Jail when I was released. He is no more. I've learned from my mistakes and I'm a different person. It just won't happen again. I realize what is to be lost * * * I lost a thriving business. I lost my livelihood. I lost the respect of the citizens of Franklin County. I lost my privilege of practicing the profession that I had trained for. I lost everything—everything except my family. And at times, it was even hard to face them.

Mr. Bradford further testified that his practice of pharmacy is different now than it was in the late 1980's. Judge Randall found that he credibly testified that ''[t]he patients in the late '80s—my main objective was filling their prescriptions, keeping them coming to my store, and I did anything to do that. Now my main objective is the safety and well-being of my patients.'' According to Mr. Bradford, he now contacts physicians if he believes a patient is overutilizing drugs and he does not prematurely refill prescriptions. Additionally, he currently participates in managed care networks, and as a result, if he tried to prematurely refill a prescription, the pharmacy's computer would reject it and if he did refill the prescription, he would not receive payment from the managed care network.

The mayor of Estill Springs testified that Respondent is the only pharmacy in the town. The population of Estill Springs is 1,500 to 1,600 people with approximately 60 percent of the population retired. Some in the community lack transportation to be able to frequent pharmacies outside of Estill Springs. The mayor testified that he considers Mr. Bradford to be an outstanding professional with the highest integrity and honesty.

Respondent introduced into evidence the affidavit of an Estill Springs physician who stated that he is personally familiar with Mr. Bradford, his pharmacy practices, his conviction for controlled substance violations, and the actions by the Pharmacy Board. It is the physician's opinion that Mr. Bradford displays ''a high degree of honesty, integrity and professionalism

[1] James R. Bradford was referred to as Dr. Bradford at various times throughout the transcript of these proceedings and by Judge Randall in her opinion. There is nothing in the record to indicate that he has a degree that warrants this title, and therefore he will be referred to as Mr. Bradford throughout this final order.

in the provision of pharmacy services to patients * * * [and] in relationships with other health care professionals.''

Both Mr. Bradford and Respondent possess state licenses issued by the Pharmacy Board. In Tennessee, both the pharmacist and the pharmacy are required to obtain a controlled substance registration. The Director of the Pharmacy Board testified at one point that Mr. Bradford's controlled substance registration was reinstated by the Pharmacy Board with his pharmacist license. However when later asked whether Respondent pharmacy has a Tennessee controlled substance license, he testified that ''I'm sure they probably don't, but that's because of the absence of the DEA waiver, and he did not request that either.'' Further, when asked whether Mr. Bradford is licensed in the state to handle controlled substances, the Director responded. ''He would be, but that was not requested, I don't think. Without having his license in front of me, I couldn't [say].''

Since there was no explanation for the discrepancy in the Director's testimony and since the Government did not raise lack of state authorization as an issue, Judge Randall ''assume[d] that [the Director's] initial testimony about that the status of the state controlled substance registration is correct * * * [and] assume[d] that his testimony to the contrary was based on a misunderstanding of the question.'' Therefore, Judge Randall found that Respondent pharmacy and Mr. Bradford possess state authority to dispense controlled substances. The Acting Deputy Administrator agrees with Judge Randall that based upon the Pharmacy Board Director's testimony, there is confusion regarding the status of Respondent's state authorization to handle controlled substances. However, as will be discussed further below, the Acting Deputy Administrator disagrees with Judge Randall's assumption that Respondent is authorized in Tennessee to handle controlled substances.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny any application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

As to factor one, it is undisputed that Mr. Bradford's pharmacist license and the license of his previous pharmacy were revoked through an Agreed Final Order on September 27, 1989. In 1993, Mr. Bradford's pharmacist license was reinstated, but he was precluded from being the pharmacist in charge of a pharmacy. Then, in 1995 all of Mr. Bradford's privileges were restored and he was on probation until September 1998.

Regarding factors two and four, the applicant's experience in dispensing controlled substances and compliance with applicable laws relating to controlled substances, Mr. Bradford's dispensing practices while the owner and pharmacist at Prince Drug Store are relevant to these proceedings. DEA has consistently held that a pharmacy operates under the control of owners, stockholders, pharmacists, or other employees, and that the conduct of these individuals is relevant in evaluating a pharmacy's fitness to be registered with DEA. See e.g., Rick's Pharmacy, 62 FR 42,595 (1997); Big T Pharmacy, Inc., 47 FR 51,830 (1982).

Mr. Bradford, the owner of Respondent, admits that he dispensed over 60,000 dosage units of controlled substances without a physician's authorization. As Judge Randall noted, ''[i]t is particularly troubling that Dr. Bradford continued to dispense controlled substances without authorization after his first arrest.'' According to Mr. Bradford, he had trouble saying ''no'' to his customers and he did not want to lose any business, so he dispensed drugs without authorization.

However, Mr. Bradford has accepted responsibility for his actions and says that his main objective now is his patients' safety and well-being. He recognizes how much he has to lose should he unlawfully dispense controlled substances again. In addition, the mayor of Estill Springs, the sheriff of Franklin County and Respondent's probation officer all believe that Mr. Bradford has been rehabilitated. Further, the Acting Deputy Administrator notes that Mr. Bradford appears to have kept abreast of changes in DEA's regulations even though he has not been handling controlled substances since 1989.

As to factor three, it is undisputed that Mr. Bradford was convicted of four felony counts related to his handling of controlled substances. Regarding factor five, the Acting Deputy Administrator agrees with Judge Randall that the record does not indicate any additional conduct that would threaten the public health or safety.

The Acting Deputy Administrator concludes that the Government has presented a prima facie case for denial of Respondent's application for registration based upon Mr. Bradford's unlawful dispensing of over 60,000 dosage units of controlled substances, his conviction, and the action of the Pharmacy Board. However, Mr. Bradford appears to be extremely remorseful and to be rehabilitated. He has not engaged in any unlawful conduct since 1989. Further, He approaches the dispensing of drugs very differently now than he did in 1989. He contacts a physician if he believes that a patient is using too much of a drug. Also, he participates in managed care networks which causes his computer system to reject a prescription if he tries to refill it prematurely. Finally, Respondent is the only pharmacy in Estill Springs which has a population of approximately 1,500 people. Without a DEA registration, Respondent cannot meet the needs of the community since it cannot dispense controlled substances. Therefore, the Acting Deputy Administrator agrees with Judge Randall that it would be in the public interest to grant Respondent a DEA Certificate of Registration.

However, the status of Respondent's state authorization to handle controlled substances is unclear. This is significant since DEA does not have the statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to handle controlled substances. See 21 U.S.C. 802(21) and 823(f). Given the Pharmacy Board Director's testimony, there is confusion as to whether Respondent pharmacy is in fact authorized by the State of Tennessee to handle controlled substances. Unlike Judge Randall, the Acting Deputy Administrator does not assume that the pharmacy is properly licensed by the state. Therefore, the Acting Deputy Administrator concludes that Respondent pharmacy should be issued a DEA Certificate of Registration

once it provides evidence to DEA that it is authorized to handle controlled substances in Tennessee.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Bradford's Pharmacy, be, and it hereby is granted upon receipt by the DEA Nashville office of evidence of the pharmacy's state authorization to handle controlled substances. This order is effective November 30, 1998.

Dated: October 23, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–29063 Filed 10–29–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 9, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 9, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 10/05/98

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,040	Clarks Co., N.A. (The) (Comp)	Kennett Square, PA	09/25/98	Office Management for WV Mfg Facility.
35,041	JRF Enterprises (Wrks)	Scottsboro, AL	09/21/98	T-Shirts and Sweatshirts.
35,042	Western Iron Works, Inc (Comp)	San Angelo, TX	09/22/98	Gray Iron Castings, Rings and Lids.
35,043	Louis Allis Co (IUE)	Milwaukee, WI	09/14/98	Motors and Generators.
35,044	Givens Industries, Inc (Comp)	Moulton, AL	09/21/98	Shirts and Pants for Men's and Women's.
35,045	Summit Station Mfg. (UNITE)	Pine Grove, PA	09/22/98	Fleece Sportswear.
35,046	Gates Power Drive Product (Comp)	Dothan, AL	09/18/98	Automotive Pulleys, Idlers and Tensioners.
35,047	Beacon Looms, Inc (Comp)	Teaneck, NJ	09/18/98	Curtains and Bedding Products.
35,048	Beacon Looms, Inc (Comp)	Beacon, NY	09/18/98	Curtains and Bedding Products.
35,049	Borden Foods Corp (Comp)	Tolleson, AZ	09/23/98	Dry Pasta.
35,050	Leather Specialty Co (Wrks)	Cincinnati, OH	09/16/98	File Inserts for Attache Cases.
35,051	Merix Corp (Comp)	Forest Grove, OR	09/05/98	Advanced Printed Circuit Boards.
35,052	Preferred Electronic, Inc. (Wrks)	Somerville, CT	09/08/98	Transformers, Power Supplies.
35,053	Spartan Mills (Wkrs)	Startex, SC	09/05/98	Fabric for Wallpaper Backing and Furniture.
35,054	Malden Mills Industries (UNITE)	Bridgton, ME	09/25/98	Polartec and Polarfleece Textiles.
35,055	Courtland Manufacturing (Wrks)	Appomattox, VA	09/22/98	Ladies' and Childrens' Apparel.
35,056	Halliburton Energy Serv. (Comp)	Houston, TX	09/28/98	Oil and Gas Exploration.
35,057	Connex Pipe Systems (Comp)	Troutville, VA	09/22/98	Pipe Fabrication.
35,058	UCAR Carbon Co., Inc (OCAW)	Clarksburg, WV	09/24/98	Elecrodes.
35,059	Textron Turf Care (UAW)	Racine, WI	09/23/98	Turf Equipment for Golf Cources.
35,060	Schlumberger (Wrks)	Rowell, NM	09/15/98	Oil Drilling.
35,061	Photran Corp. (Wrks)	Lakeville, MN	09/21/98	Coated Glass.
35,062	Chicago Rawhide (Comp)	Gastonia, NC	09/24/98	Sealing Devices.
35,063	Apehead Mfg., Inc. (Wrks)	Cookeville, TN	09/21/98	Protective Padding, Baseball Softball.
35,064	Martech Medical (Wrks)	Harleysville, PA	09/11/98	Medical Products.
35,065	Cape Cod Sportswear (UNITE)	New Bedford, MA	09/24/98	Ladies' Jackets.
35,066	Funtime Sportswear (Wrks)	Moscow, PA	09/24/98	Sports Garments for Sara Lee Knit.
35,067	General Electric (EMD) (Wrks)	Coshocton, OH	09/26/98	Copper Clad Laminates.

[FR Doc. 98–29170 Filed 10–29–98; 8:45 am]
BILLING CODE 4310–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 9, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 9, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 13th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 10/13/98

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,068	M. Fine and Sons Mfg Co (Wkrs)	Louisville, KY	10/01/98	Jeans.
35,069	Greenwick Air Services (Wkrs)	Miami, FL	05/28/98	Jet Engines.
35,070	CTS of Bentonville (Wkrs)	Bentonville, AR	09/30/98	Resistors.
35,071	Viskase Corp (Wkrs)	Chicago, IL	10/02/98	Casings and Plastic Wrappings.
35,072	Lone Star Steel (USWA)	Lone Star, TX	09/29/98	Oilfield Tubular Goods.
35,073	Camptown Togs, Inc (Co.)	Clanton, AL	09/24/98	Boys', Girls' & Infants' Apparel.
35,074	Woodwork Corp. of America (Wkrs)	Merrill, WI	09/28/98	Synthetic Bowling Lanes.
35,075	Cross Creek Apparel (Co.)	Mt. Airy, NC	09/25/98	Light and Heavy Weight Fleecewear.
35,076	Vulcan—Brunswick (Wkrs)	Antigo, WI	09/28/98	Bowling Pins.
35,077	William Carter Co (The) (Wkrs)	Centreville, MS	09/22/98	Infant's and Children's Garments.
35,078	BWD Automotive of Alabama (Wkrs)	Selma, AL	09/24/98	Automotive Switches, Ignition, Locks.
35,079	G.E. Industrial Systems (Wkrs)	Erie, PA	09/24/98	DC Motors and Component Parts.
35,080	International Assembly (Co.)	Tucson, AZ	10/02/98	Computers.
35,081	Fabcare, Inc (Co.)	Pickwick Dam, TN	09/24/98	Denim Apparel Laundry Chemicals.
35,082	Gibeck, Inc (Wkrs)	Indianapolis, IN	09/22/98	Plastic Tubes for Breathing Circuits.
35,083	Union Apparel, Inc/ (UNITE)	Novelt, PA	09/22/98	Men's & Ladies' Sportcoats.
35,084	MascoTech (UAW)	Fraser, MI	10/02/98	Steel Forgings for Auto Industry.
35,085	Integrated Circuit System (Co.)	Norristown, PA	10/01/98	Electronic Circuits.
35,086	North Star Steel (USWA)	Vidor, TX	09/29/98	Wire Rods.
35,087	Crown Cork and Seal (Wkrs)	Arlington, TX	09/29/98	Plastic Lines Bottle Caps.
35,088	Horace Small (Wkrs)	Brownsville, TX	10/02/98	Uniform Apparel.
35,089	Trans Texas Gas (Co.)	Houston, TX	09/30/98	Oil and Gas.
35,090	Mead Paper (Wkrs)	Rumford, ME	10/05/98	Publishing and Specialty Paper.
35,091	Miller Golf Bags (Wkrs)	Walnut Ridge, AR	09/28/98	Golf Bags and Duffle Bags.
35,092	Eastland Shoe Mfg Corp. (Co.)	Freeport, ME	10/06/98	Men's Ladies' Shoes, Boots and Sandals.

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Acting

Director of OTAA not later than November 9, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than November 9, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Gillette Company (The) (USWA)	Janesville, WI	04/27/1998	NAFTA–2,354	Writing instruments (pens, ink pencils).
Megas Beauty Care (Co.)	Sparks, NV	03/31/1998	NAFTA–2,355	Cotton balls & coils, chimneystack pads.
Escalator handrail USA (Wkrs)	Orchard Park, NY	04/30/1998	NAFTA–2,356	Escalator handrails.
J.C. Viramontes (Wkrs)	El Paso, TX	04/30/1998	NAFTA–2,357	Denim apparel.
Western Reserve Products (Wkrs)	Gallatin, TN	04/23/1998	NAFTA–2,358	Plastic window frames for doors.
Meyer Tomatoes (IBT)	King City, CA	04/27/1998	NAFTA–2,359	Tomatoes.
VF Knitwear (Co.)	Hillsville, VA	05/04/1998	NAFTA–2,360	T-shirts and fleece wear.
VF Knitwear (Co.)	Stuart, VA	05/04/1998	NAFTA–2,360	T-shirts and fleece wear.
Gateway Sportswear (Wkrs)	Masontown, PA	05/01/1998	NAFTA–2,361	Women's pants, skirts, and t-shirts.
Rotadyne (Wkrs)	Lancaster, NY	05/01/1998	NAFTA–2,362	Recovering of print rollers.
Sheldahl (Wkrs)	Aberdeen, SD	04/30/1998	NAFTA–2,363	Electronic circuit boards.
Paper Magic Group (The) (Wkrs)	Scranton, PA	04/30/1998	NAFTA–2,364	Halloween masks.
Breed Technologies (Co.)	Brownsville, TX	04/27/1998	NAFTA–2,365	Seat belts and air bags.
Breed Technologies (Co.)	El Paso, TX	04/27/1998	NAFTA–2,365	Seat belts and air bags.
Breed Technologies (Co.)	Douglas, AZ	04/29/1998	NAFTA–2,366	Seat belts and air bags.
Independent Order of Foresters (Wkrs).	San Diego, CA	05/04/1998	NAFTA–2,367	Life insurance services.
U.S. Timber (Wkrs)	Boise, ID	04/27/1998	NAFTA–2,368	Appearance boards (siding, flooring etc).
VF Knitwear (Co.)	Bakersville, NC	05/04/1998	NAFTA–2,369	T-shirts and fleece wear.
VF Knitwear (Co.)	Kinston, NC	05/04/1998	NAFTA–2,369	T-shirts and fleece wear.
Garland Commercial Industries (Co.).	Freeland, PA	05/06/1998	NAFTA–2,370	Commercial cooking equipment.
Toroplast (Wkrs)	McAllen, TX	05/05/1998	NAFTA–2,371	Plastic seat belts housing.
Sinclair Technologies (CWA)	Tonawanda, NY	05/06/1998	NAFTA–2,372	Communications base station equipment.
EEX Corporation (Wkrs)	Houston, TX	05/06/1998	NAFTA–2,373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, LA.	05/06/1998	NAFTA–2,373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, MS.	05/06/1998	NAFTA–2, 373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, NY.	05/06/1998	NAFTA–2, 373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, WA.	05/06/1998	NAFTA–2, 373	Crude oil.
Towne and Country (Co.)	Lugoff, SC	05/07/1998	NAFTA–2, 374	Ladies' sportswear.
Dawn (Co.)	Lugoff, SC	05/07/1998	NAFTA–2, 374	Ladies' sportswear.
Transcity Terminal Warehouse (IBT).	Indianapolis, IN	04/05/1998	NAFTA–2, 375	Warehousing and storage.
Horton Company (The) (UAW)	Jackson, MI	04/23/1998	NAFTA–2, 376	Automotive components (drive & steering).
Cott Manufacturing (Wkrs)	West Mifflin, PA	05/11/1998	NAFTA–2, 377	Line indentification markers.
American Lantern (USWA)	Newport, AR	04/30/1998	NAFTA–2, 378	Lighting fixtures.
Boise Cascade (WCIU)	Emmett, ID	05/07/1998	NAFTA–2, 379	Plywood.
Boise Cascade (WCIU)	Emmett, ID	05/07/1998	NAFTA–2, 379	Softwood dismensional lumber.
Boise Cascade (WCIU)	Cascade, ID	05/07/1998	NAFTA–2, 379	Lumber.
Boise Cascade (WCIU)	Horseshoe, ID	05/07/1998	NAFTA–2, 379	Lumber.
Kimberly Clark (Co.)	Del Rio, TX	05/11/1998	NAFTA–2, 380	Nurses caps, shoe covers & stockinettes.
Hasbro Manufacturing Services (Co.).	El Paso, TX	05/11/1998	NAFTA–2, 381	Toys.
Berg Electronics (Wkrs)	Clearfield, PA	05/12/1998	NAFTA–2, 382	Electronic connectors.
Tops MaliBU (Wkrs)	Eugene, OR	05/12/1998	NAFTA–2, 383	Novelty candles.
MPM Automotive Products (Co.)	TuCSon, AZ	05/13/1998	NAFTA–2, 384	Marketing of remanufacturing auto parts.
Code alarm (Wkrs)	Georgetown, TX	05/14/1998	NAFTA–2, 385	Wire harnesses for car alarms.
Jostens Photography (Co.)	Webster, NY	05/13/1998	NAFTA–2, 386	School photographs.
GL&V Black Clawson-Kennedy (IAMAW).	Watertown, NY	05/13/1998	NAFTA–2, 387	Machine paper rolls and dryers.
Paul-Son Gaming Supplies (Wkrs)	Las Vegas, NV	05/08/1998	NAFTA–2, 388	Playing cards.
Gates Rubber Company (The) (Co.)	Jefferson, NC	05/12/1998	NAFTA–2, 389	Vulcoflex vehicular coolant hoses.
Tri Clover (IAMAW)	KenOsha, WI	05/18/1998	NAFTA–2, 390	Tubular fittings.
Buena Vista (Wkrs)	Buena Vista, VA	05/14/1998	NAFTA–2, 391	T-shirts, fleece sweatshirts.
Wausau Mosinee Paper (Co.)	Rhinelander, WI	05/15/1998	NAFTA–2,392	Technical specialty paper.
Alps Electric (USA) (Co.)	Huntington Beach, CA	03/12/1998	NAFTA–2,393	Keycaps & plastic parts for computers.
Oxford Industries (Co.)	Wadley, GA	05/18/1998	NAFTA–2,394	Men's dress shirts.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Phillips Van Heusen (Co.)	Geneva, AL	05/18/1998	NAFTA–2,395	Men's dress and casual shirts.
Phillips Van Heusen (Co.)	Ozark, AL	05/18/1998	NAFTA–2,395	Men's dress and casual shirts.
Phillips Van Heusen (Co.)	Augusta, AR	05/14/1998	NAFTA–2,396	Men's dress and casual shirts.
Siebe Appliance Controls (Co.)	New Stanton, PA	05/18/1998	NAFTA–2,397	Appliance controls.
Americold Logistics (Wkrs)	Nampa, ID	05/13/1998	NAFTA–2,398	Packaging & storage of frozen potatoes.
Robertshaw Controls (Co.)	Long Beach, CA	05/18/1998	NAFTA–2,399	Gas heating control valves.
Triquest Precision Plastics (Co.)	Vancouver, WA	05/18/1998	NAFTA–2,400	Molded plastic housings for computers.
Stella Foods (Wkrs)	Green Bay, WI	05/18/1998	NAFTA–2,401	Administration duties.
Kleinert's Inc. of Florida (Co.)	Largo, FL	05/18/1998	NAFTA–2,402	Infants apparel.
Eastman Kodak (Co.)	Rochester, NY	05/15/1998	NAFTA–2,403	Film, black & white photographic paper.
Hovland Manufacturing (Co.)	Cody, WY	05/19/1998	NAFTA–2,404	Women's denim jeans.
Price Pfister (IBT)	Pacoima, CA	05/21/1998	NAFTA–2,405	Plumbing fixtures.
Koehler Manufacturing (Co.)	Marlborough, MA	05/20/1998	NAFTA–2,406	Battery powered portable lighting.
G.F. Wright Steel and Wire (USWA)	Worcester, MA	05/20/1998	NAFTA–2,407	Woven hardware clothes.
Willamette Industries (WCIW)	Eugene, OR	05/18/1998	NAFTA–2,408	Softwood lumber.
JPM Company (The) (Co.)	Winnsboro, SC	05/20/1998	NAFTA–2,409	Cable assemblies and wire harnesses.
Taylor Precision Products (Co.)	Fletcher, NC	05/20/1998	NAFTA–2,410	Rain gauges and patio dials.
Kowa Printing (GCIU)	Danville, IL	05/21/1998	NAFTA–2,411	Printing business forms, booklets, books.
St. Gobain (OCAW)	Keasbey, NJ	05/22/1998	NAFTA–2,412	Refractories.
S.T. and E (Co.)	Punxsutawney, PA	05/26/1998	NAFTA–2,413	Transportation services.
Sunds Defibrator Woodhandling (IAMAW).	Carthage, NY	05/26/1998	NAFTA–2,414	Woodchippers machines.
Halmode Apparel (Co.)	New Castle, VA	04/12/1998	NAFTA–2,415	Maternity dresses, nurses uniforms.
Turner and Minter (Co.)	Eagle Rock, VA	04/12/1998	NAFTA–2,415	Maternity dresses, nurses uniforms.
Eaton Corporation (Co.)	Salisbury, MD	05/18/1998	NAFTA–2,416	Circuit breakers for industrial.
Idea Courier (Wkrs)	Phoenix, AZ	05/26/1998	NAFTA–2,417	Printed circuit boards.
Celanese (UNITE)	Narrows, VA	05/26/1998	NAFTA–2,418	Acetate tow and acetate filament.
Strategic Finishing (Wkrs)	Tualatin, OR	05/26/1998	NAFTA–2,419	Painting and metalizing.
ITT Cannon Connectors North America (Co.).	Nogales, AZ	05/26/1998	NAFTA–2,420	Receiving & inspection connectors.
Ohmite (UPIU)	Huntington, IN	05/29/1998	NAFTA–2,421	Passive electronic components-resistors.
MacMillan Bloedel Building Materials (Wkrs).	Spokane, WA	06/01/1998	NAFTA–2,422	Reselling of lumber & lumber products.
Nutri-Metics International (USA) (Wkrs).	Cerritos, CA	06/01/1998	NAFTA–2,423	Packing & shipping of skincare products.
Datagold (Wkrs)	Mocanaqua, PA	06/02/1998	NAFTA–2,424	Pocket file folders.
Philips Components (Wkrs)	Saugerties, NY	06/02/1998	NAFTA–2,425	Soft ferrite cores.
Virginia Apparel (Wkrs)	Rocky Mount, VA	05/28/1998	NAFTA–2,426	Men's & women's cotton shorts & pants.
Run Graphic Communicators (Wkrs).	Portland, OR	06/02/1998	NAFTA–2,427	Commercial printing.
Forest Furniture (Co.)	Lapine, OR	06/02/1998	NAFTA–2,428	Pine furniture.
Cowtown Boots (Wkrs)	El Paso, TX	06/02/1998	NAFTA–2,429	Western-style boots.
J.L. Clark (MPWU)	Downers Grove, IL	06/08/1998	NAFTA–2,430	Collapsible aluminum tubes.
Crown Pacific Limited Partnership (IAMAW).	Sandpoint, ID	06/08/1998	NAFTA–2,431	Lumber types and products.
Champion Pacific Timberlands (Co.)	Lebanon, OR	06/04/1998	NAFTA–2,432	Seedings.
BTR Sealing Systems (UNITE)	Maryville, TN	06/03/1998	NAFTA–2,433	Weather stripping & rubber doorseals.
Magnetek (Co.)	Prairie Grove, AR	06/05/1998	NAFTA–2,434	Fractional horsepower electric motors.
Allied Systems (Co.)	Sherwood, OR	06/08/1998	NAFTA–2,435	Tree skidders and winches.
Wells Lamont (The) (Co.)	El Paso, TX	06/04/1998	NAFTA–2,436	Cut leather for gloves.
Henderson Sewing Machine (Co.)	Andalusia, AL	06/09/1998	NAFTA–2,437	Sewing machines.
Henderson Sewing Machine (Co.)	Multrie, GA	06/09/1998	NAFTA–2,437	Sewing machines.
Henderson Sewing Machine (Co.)	Maryville, TN	06/09/1998	NAFTA–2,437	Sewing machines.
Gould Electronics (IBEW)	Newburyport, MA	06/09/1998	NAFTA–2,438	Electrical fuses.
Gould Electronics (IBEW))	El Paso, TX	06/09/1998	NAFTA–2,438	Electrical fuses.
Berg Electronics Group (IBEW)	Franklin, IN	06/05/1998	NAFTA–2,439	Radio frequency connectors.
Rexworks (USWA)	Milwaukee, WI	06/10/1998	NAFTA–2,440	Cement mixers.
B and V Enterprises (Wkrs)	Springdale, AR	05/19/1998	NAFTA–2,441	Embroidered t-shirts & sweat shirts.
Intercraft (Wkrs)	Statesville, NC	06/05/1998	NAFTA–2,442	Picture frames.
Raytheon Systems (UPIU)	Fort Wayne, IN	06/15/1998	NAFTA–2,443	Out door units.
McCabe Packing (Co.)	Springfield, IL	06/10/1998	NAFTA–2,444	Beef carcasses.
Brunswick Bicycles (Co.)	Effingham, IL	06/12/1998	NAFTA–2,445	Bicycles.
BASF (Wkrs)	Santa Ana, CA	06/11/1998	NAFTA–2,446	Polystyrene pellets.
Nocona Boot (Co.)	Nocona, TX	04/30/1998	NAFTA–2,447	Western boots.
Kemet Electronics (Co.)	Simpsonville, SC	06/22/1998	NAFTA–2,448	Tantalum capacitors.
Kemet Electronics (Co.)	Fountain Inn, SC	06/22/1998	NAFTA–2,448	Tantalum capacitors.
Heinz Pet Products (Wkrs)	Kankakee, IL	06/22/1998	NAFTA–2,449	Dog food & pet treats.
Willamette Industries (Co.)	Saginaw, OR	06/18/1998	NAFTA–2,450	Softwood laminated beams.
Teledyne Electronic Technologies (Co.).	Scottsdale, AZ	06/17/1998	NAFTA–2,451	Industrial solid state relays.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Tarantola Trucking (IBT)	Flemington, NJ	06/18/1998	NAFTA–2,452	Transportation and distribution.
Accuride (UAW)	Henderson, KY	06/15/1998	NAFTA–2,453	Tubed wheel.
General Electric (IUE)	Memphis, TN	06/17/1998	NAFTA–2,454	Miniature lamps & halogen lamps.
Gorge Lumber (Co.)	Portland, OR	06/16/1998	NAFTA–2,455	Lumber boards.
Durotest Lighting (IUE)	Clifton, NJ	06/11/1998	NAFTA–2,456	Lamps (incandescent and fluorescent units).
National Garment (Wkrs)	Columbia, MO	06/18/1998	NAFTA–2,457	Children's clothing.
Trident Automotive (Co.)	Blytheville, AR	06/16/1998	NAFTA–2,458	Automotive cables.
Bennett Uniform (Co.)	Greensboro, NC	06/22/1998	NAFTA–2,459	Uniform clothing.
Unity Knitting Mills (Wkrs)	Wadesboro, NC	06/25/1998	NAFTA–2,460	Thermal undershirts & drawers & t-shirts.
Kellerman Logging (Wkrs)	Joseph, OR	06/23/1998	NAFTA–2,461	Various stages of logging.
Alcoa Fujikura (Co.)	El Paso, TX	06/23/1998	NAFTA–2,462	Wire harnesses.
Triple A In The USA (Co.)	Bellaire, OH	06/23/1998	NAFTA–2,463	Ladies swimwear and sportswear.
International Jensen (Co.)	Lumberton, NC	06/29/1998	NAFTA–2,464	Automotive loud loudspeakers.
Paragon Electric (IBEW)	Two Rivers, WI	06/26/1998	NAFTA–2,465	Motor controls.
Sanyo E and E (Co.)	San Diego, CA	06/24/1998	NAFTA–2,466	Refrigerators and freezers.
J.E. Morgan Knitting Mills (Wkrs)	Gilbertsville, PA	06/24/1998	NAFTA–2,467	Thermal underwear.
Pennsylvania Textile (UNITE)	West Hazleton, PA	06/30/1998	NAFTA–2,468	Dyed and finished fabric.
Columbia Lighting (IBEW)	Houston, TX	06/25/1998	NAFTA–2,469	Fluorescent lighting fixtures.
American Meter (IUE)	Erie, PA	06/30/1998	NAFTA–2,470	Gas meters.
Angelica Image Apparel (Co.)	Waynesboro, TN	06/25/1998	NAFTA–2,471	Men's and women's work pants and shirts.
General Instrument (Co.)	Hickory, NC	07/02/1998	NAFTA–2,472	Digital satellite integrated receivers.
Pfaltzgraff Company (The) (Wkrs)	Bendersville, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Pfaltzgraff Company (The) (Wkrs)	Dove, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Pfaltzgraff Company (The) (Wkrs)	York, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Pfaltzgraff Company (The) (Wkrs)	Thomasville, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Johnson Controls (UAW)	Greenfield, OH	07/07/1998	NAFTA–2,474	Foam armrests and headrests.
Klamath Veneer (Wkrs)	Klamath Falls, OR	06/30/1998	NAFTA–2,475	Green and day veneer products.
Johnson and Johnson Medical (Co.)	Menlo Park, CA	07/03/1998	NAFTA–2,476	Intravenous specialty catheters.
Bosch Automotive Motor Systems (Co.).	Hendersonville, TN	06/29/1998	NAFTA–2,477	Fractional horsepower DC motor.
Sivaco New York (USWA)	Tonawanda, NY	06/26/1998	NAFTA–2,478	Steel wire.
Therm-O-Disc (Co.)	Honeoye Falls, NY	06/26/1998	NAFTA–2,479	Water flow products.
Kodak Polychrome Graphics (ICWU).	Binghamton, NY	07/06/1998	NAFTA–2,480	Film (pre-press & printing industry).
Parker Hannifin (Wkrs)	Niles, IL	07/06/1998	NAFTA–2,481	Hydraulic valves.
Lucas Variety (UAW)	Mt. Vernon, OH	07/07/1998	NAFTA–2,482	Brake drums & caplipers.
Crown Cork and Seal (Co.)	Arden, NC	07/07/1998	NAFTA–2,483	Metal containers (tin cans).
Johnson Controls (Wkrs)	Pulaski, TN	07/02/1998	NAFTA–2,484	Foram headrests and armrests.
Midwest Folding Carton (UNITE)	Rockford, MI	06/01/1998	NAFTA–2,485	Paperboard.
Bindicator (Wkrs)	Port Hurton, MI	06/15/1998	NAFTA–2,486	Level instruments.
Walbro (UAW)	Cass City, MI	07/02/1998	NAFTA–2,487	Small enginers carburetors.
Boydston and Franzen Service (Co.).	Cody, WY	07/09/1998	NAFTA–2,488	Crude oil and natural gas.
Control Elements (Wkrs)	Portland, OR	07/08/1998	NAFTA–2,489	Control valves.
TKC Apparel (Wkrs)	Reidsville, GA	07/06/1998	NAFTA–2,490	Ladies knit tops and shirts.
Corel (Wkrs)	Orem, UT	07/03/1998	NAFTA–2,491	Master disks.
Union Special Corporation (Wkrs)	Charlotte, NC	07/08/1998	NAFTA–2,492	Automated industrial sewing systems.
Allied Signal (Co.)	Columbia, SC	07/09/1998	NAFTA–2,493	Drawtwist nylon yarn.
Gilroy Canning (IBT)	Gilroy, CA	07/08/1998	NAFTA–2,494	Processes tomatoes in paste & puree form.
M and J Clothing Sample (Wkrs)	El Paso, TX	07/03/1998	NAFTA–2,495	Men's and women's apparel.
Bibb Corporation (Wkrs)	Roanoke Rapids, NC	07/09/1998	NAFTA–2,496	Textile fabrics (terrycloth & napery).
Ball Foster Glass Container, L.L.C. (IGMPP).	Port Allegany, PA	07/13/1998	NAFTA–2,497	Glass containers for baby foods.
Amron L.L.C. (IAMAW)	Waukesha, WI	07/13/1998	NAFTA–2,498	Medium caliber ordnance.
Sheldahl (Co.)	Northfield, MN	07/13/1998	NAFTA–2,499	Flexible printed circuitry.
Group Genesis (Wkrs)	Marion, OH	07/13/1998	NAFTA–2,500	Sailplane.
Bon Worth (Co.)	Spindale, NC	07/07/1998	NAFTA–2,501	Ladies' apparel (tops, pants, shorts).
Henry I. Siegel (Co.)	Hickman, KY	07/09/1998	NAFTA–2,502	Men's & women's denim jeans & slack.
Gurien Finishing (Co.)	Union City, TN	07/13/1998	NAFTA–2,503	Jeans.
Fleer Corporation (Wkrs)	Mt. Laurel, NJ	07/16/1998	NAFTA–2,504	Confectionary products.
Homemaker Industries (Co.)	Athens, TN	07/16/1998	NAFTA–2,505	Braided rugs.
Spray Air USA and Alida Group (Wkrs).	Grangeville, ID	07/20/1998	NAFTA–2,506	Sprayers and components.
Weslock Brand (Co.)	Compton, CA	07/19/1998	NAFTA–2,507	Residential door locks.
Guest Enterprises L.L.C. (Wkrs)	Brownsville, TX	07/19/1998	NAFTA–2,508	Cut cloth & distribute finished garments.
National Textiles (Co.)	Morganton, NC	07/19/1998	NAFTA–2,509	Jersey and fleece casualwear apparel.
Bunn Manufacturing (Wkrs)	Wilson, NC	07/16/1998	NAFTA–2,510	Children's jeans.
Hubbell Premise Wiring (Wkrs)	Marion, NC	07/16/1998	NAFTA–2,511	Circuit boards, adapter & computer cable.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Koret of California (UNITE)	Price, UT	07/09/1998	NAFTA–2,512	Women's apparel (skirts, slacks, jacket).
Crump Wilson Shields Commission (Wkrs).	National Stockyards, IL	07/15/1998	NAFTA–2,513	Services to buyers of livestock.
Coats American (Co.)	El Paso, TX	07/21/1998	NAFTA–2,514	Distribution of thread and zippers.
Syroco (Wkrs)	Siloam Springs, AR	07/22/1998	NAFTA–2,515	Patio chairs.
General Electric (Wkrs)	Solvay, NY	07/14/1998	NAFTA–2,516	Electricity.
General Electric (Wkrs)	Beaver Fall, NY	07/14/1998	NAFTA–2,516	Electricity.
General Electric (Wkrs)	Gouvernuer, NY	07/14/1998	NAFTA–2,516	Electricity.
General Electric (Wkrs)	Carthage, NY	07/14/1998	NAFTA–2,516	Electricity.
General Electric (Wkrs)	South Glenn Falls NY	07/14/1998	NAFTA–2,516	Electricity.
W.T.D. Industries (Wkrs)	Corvallis, OR	07/20/1998	NAFTA–2,517	Dimension lumber.
Scientific Atlanta (Wkrs)	Norcross, GA	07/27/1998	NAFTA–2,518	Radio frequency products.
Keptel (Co.)	Tinton Falls, NJ	07/27/1998	NAFTA–2,519	Trays, splitter modules & light guards.
XEL Communications (Co.)	Aurora, CO.	07/27/1998	NAFTA–2,520	Printed crircuit boards.
Capital Mercury Apparel (Co.)	Marshall, AR	07/24/1998	NAFTA–2,521	Men's dress and sport shirts.
Capital Mercury Apparel (Co.)	Mt. View, AR	07/24/1998	NAFTA–2,521	Men's dress and sport shirts.
Thorn Apple Valley (UFCW)	Detroit, MI	07/13/1998	NAFTA–2,522	Fresh pork.
Industrial Ceramics (Wkrs)	Lima, NY	07/14/1998	NAFTA–2,523	Electrical proeclain insulators.
Tri Americas (CBO)	El Paso, TX	07/27/1998	NAFTA–2,524	Men's jeans.
Borg Warner Automotive (Co.)	Sterling Heights, MI	07/15/1998	NAFTA–2,525	Automotive torque convertors.
National Environmental Products (Co.).	Pompano Beach, FL	06/26/1998	NAFTA–2,526	Climate control actuators.
NACCO Materials Handling Group (Co.).	Flemington, NJ	07/20/1998	NAFTA–2,527	Fork lifts and component parts.
NACCO Materials Handling Group (Co.).	Danville, IL	07/20/1998	NAFTA–2,527	Fork lifts and component parts.
PacifiCorp (IUOE)	Centralia, WA	07/30/1998	NAFTA–2,528	Low-sulfur, sub-bituminous coal.
PacifiCorp (IBEW)	Centralia, WA	07/30/1998	NAFTA–2,529	Electrical power.
Caro-Knit and C-Knit Apparel (Co.)	Jefferson, SC	07/29/1998	NAFTA–2,530	Men's and boy's knit shirts.
Sakhina Fashions (Co.)	Murphy, NC	07/28/1998	NAFTA–2,531	Men's and women's jeans.
General Electric (Wkrs)	Schenectady, NY	07/28/1998	NAFTA–2,532	Steam/gas turbine & generator components.
Siebe Automotive—Algood (Wrks)	Algood, TN	07/29/1998	NAFTA–2,533	Automotive thermostats.
Key Tronic (Co.)	Spokane, WA	07/22/1998	NAFTA–2,534	Keyboards for computers.
Proctor and Gamble (Co.)	Greenville, NC	07/30/1998	NAFTA–2,535	Always catamenials & adult incontinence.
Marwi USA (Co.)	Olney, IL	07/31/1998	NAFTA–2,536	Bicycles parts.
Lasting Products (Wkrs)	Farmers Branch, TX	08/03/1998	NAFTA–2,537	Home decorative and gift items.
Whisper Knits (Co.)	Clinton, NC	07/29/1998	NAFTA–2,538	Men's and boy's shirts.
Whisper Knits (Co.)	Vass, NC	07/29/1998	NAFTA–2,538	Men's and boy's shirts.
Inter Lake Paper (PMWU)	Kimberly, WI	07/31/1998	NAFTA–2,539	Coated freesheet paper grades.
Sonoco Products (Wkrs)	Holyoke, MA	08/03/1998	NAFTA–2,540	Paper machine.
Hewlett Packard (Co.)	Loveland, CO	08/07/1998	NAFTA–2,541	Computer tape back-up.
Okie Apparel—Dash America (Wkrs).	Hugo, OK	08/04/1998	NAFTA–2,542	Sewing operations.
R.S.I. Home Products (Wkrs)	Lincolnton, NC	08/06/1998	NAFTA–2,543	Bathroom cabinet doors.
Oneita Industries (Co.)	Clint, TX	08/06/1998	NAFTA–2,544	T-shirt sewing.
Sara Lee Hosiery (Co.)	Mesilla Park, NM	07/22/1998	NAFTA–2,545	Ladies' hosiery.
Stibnite Mine (Co.)	McCall, ID	08/10/1998	NAFTA–2,546	Gold and other precious metals.
Florsheim Group (UNITE)	Cape Girardeau, MO	08/11/1998	NAFTA–2,547	Men's dress shoes.
Apparel America (UNITE)	New Haven, CT	08/10/1998	NAFTA–2,548	Women's swimwear.
Apparel America (UNITE)	Hartford, CT	08/10/1998	NAFTA–2,548	Women's swimwear.
Siebe Appliance Controls (Co.)	Kendallville, IN	08/11/1998	NAFTA–2,549	Infinite switches & pressure switches.
Durham 2000 (Co.)	Danville, VA	08/14/1998	NAFTA–2,550	Men's and boys' white socks.
Matsushita Electric Corp. of America (Wkrs).	San Diego, CA	08/13/1998	NAFTA–2,551	Color television.
Springs Industries (Wkrs)	Gordon, GA	08/14/1998	NAFTA–2,552	Infant terry cloth apparel.
Heatube (Co.)	Clarence, MO	08/14/1998	NAFTA–2,553	Electric heating elements (household).
Oki Semiconductor (Co.)	Tualatin, OR	08/14/1998	NAFTA–2,554	Memory and logic semiconductor.
Hudson (Wkrs)	Newport, NC	08/11/1998	NAFTA–2,555	Soccer apparel (sports, shirts etc.).
Decorative Home Accents (Wkrs)	Mooresville, NC	08/11/1998	NAFTA–2,556	Window curtains.
Oshkosh B'Gosh (Wkrs)	Gainesboro, TN	08/11/1998	NAFTA–2,557	Girls and infants; dresses, shirts etc.
Show Me Jacket (Co.)	California, MO	08/12/1998	NAFTA–2,558	Jacket.
Ricon Resins (Co.)	Grand Junction, CO	08/11/1998	NAFTA–2,559	Resin.
General Electric (Wkrs)	Somersworth, NH	08/12/1998	NAFTA–2,560	Singlephase meter subassembly & component.
Pioneer Finishing (UNITE)	Fall River, MA	08/07/1998	NAFTA–2,561	Dyed and finished fabric.
Philips Semiconductors (Wkrs)	Albuquerque, NM	07/31/1998	NAFTA–2,562	Silicon memory chips for computers.
Lone Star Steel (USWA)	Lone Star, TX	08/13/1998	NAFTA–2,563	Steel products (pipes & tubings).
Sweet Orr and Company (UFCW)	Dawsonville, GA	08/13/1998	NAFTA–2,564	Shirts.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Philomath Forest Products (Wkrs) ..	Philomath, OR	08/11/1998	NAFTA–2,565	Dimension lumber.
W.T.D. Industries (Wkrs)	Corvallis, OR	08/11/1998	NAFTA–2,565	Dimension lumber.
Sedro Woolley Lumber Company (Wkrs).	Sedro Woolley, WA	08/11/1998	NAFTA–2,565	Dimension lumber.
Huffy Bicycles (Wkrs)	Celina, OH	07/29/1998	NAFTA–2,566	Bicycles.
Globe Business Furniture (SCIW) ...	Hendersonville, TN	08/12/1998	NAFTA–2,567	Office furniture.
Cablelink (Wkrs)	Kings Mountain, NC	08/13/1998	NAFTA–2,568	Molded electronic cable assemblies.
Cordis (Wkrs)	Warren, NJ	08/10/1998	NAFTA–2,569	Cardiac shunts.
Imation (Co.)	Kearneysville, WV	08/10/1998	NAFTA–2,570	Lithographic printing plates, chemicals.
Walls Industries (Co.)	Anniston, AL	08/18/1998	NAFTA–2,571	Mpm-insulated clothing.
ADEMCO Group (UIW)	Syosset, NY	08/18/1998	NAFTA–2,572	Commercial/residential security products.
ADEMCO Group (UIW)	El Paso, TX	08/18/1998	NAFTA–2,572	Commerical/residential Security products.
American and Efird (Wkrs)	El Paso, TX	08/18/1998	NAFTA–2,573	Industrial sewing thread.
United Technologies Automotive (USWA).	Bay City, MI	07/30/1998	NAFTA–2,574	Interior automotive trim.
Zeneca (IUOE)	Mt. Pleasant, TN	08/20/1998	NAFTA–2,575	Raw Materials for insecticides.
Crown Pacific (Wkrs)	Bonners Ferry, ID	08/19/1998	NAFTA–2,576	Finished lumber prices.
Delta Apparel (Co.)	Washington, GA	08/20/1998	NAFTA–2,577	T–shirts.
Fujitsu Computer Products of America (Wkrs).	Hillsboro, OR	08/21/1998	NAFTA–2,578	Tape drives, file systems.
BWD Automotive (Wkrs)	Ottawa, IL	.....	NAFTA–2,579	Cover and driven plate assemblys.
Johnson and Johnson (UFCW)	Kankakee, IL	08/26/1998	NAFTA–2,580	Carefree lines of Sanitary production.
Donora Sportswear (Wkrs)	Donora, PA	08/28/1998	NAFTA–2,581	Men's and ladies' topcoats.
Schlumberger Anadrill (Wkrs)	Casper, WY	08/27/1998	NAFTA–2,582	Crude oil.
GCO Apparel (Wkrs)	Bowdon, GA	08/28/1998	NAFTA–2,583	Men's suits and sportcoats.
Dalmatia (Wkrs)	Herndon, PA	08/26/1998	NAFTA–2,4584	Girl's dresses, tops, and pants.
Dayco Swan (USWA)	Bucyrus, OH	07/15/1998	NAFTA–2,585	Automotive rubber hoses.
Precise Polestar (Wkrs)	State College, PA	08/26/1998	NAFTA–2,586	Injected molded plastic components.
Gintex LTD (UNITE)	Pittston, PA	08/28/1998	NAFTA–2,587	Cutting of ladies fabric for garments.
T.W. Hager Lumber (Wkrs)	Dowagiac, MI	08/25/1998	NAFTA–2,588	Lumber for fence & decks.
Native Textiles (CWA)	Glens Falls, NY	08/28/1998	NAFTA–2,589	Lace and tricot fabric.
Dean Lumber (Co.)	Gilmer, TX	08/31/1998	NAFTA–2,590	Dimensional lumber.
Nu–Kote International (Wkrs.)	Nogales, AZ	08/27/1998	NAFTA–2,591	Printer ribbons.
Stone Apparel (Co.)	North, SC	08/31/1998	NAFTA–2,592	Men's boxer shorts.
Burlen Corporation (Co.)	Thomasville, GA	08/31/1998	NAFTA–2,593	Ladies' lingerie.
Stewart Superior (Wkrs)	Chicago, IL	09/02/1998	NAFTA–2,594	Rubber Stamps.
Richard's Sportswear (Co.)	San Fernando, CA	09/02/1998	NAFTA–2,595	Jeans, knit tops.
ADEMCO (Wkrs)	El Paso, TX	08/25/1998	NAFTA–2,596	Alarm devices.
Central Resources (Co.)	Denver, CO	09/01/1998	NAFTA–2,597	Oil and gas production.
Interfrost (Wkrs)	Holley, NY	09/01/1998	NAFTA–2,598	Packaging frozen fruits and vegetables.
Food Service Specialities (Wkrs)	Columbus, WI	09/01/1998	NAFTA–2,6599	Spagetti and pizza sauce.
Lear Corp (Co)	Midland, TX	09/08/1998	NAFTA–2,600	Automobile Plastic Door Handles.
Excel Garment Manufacturing (Co)	El Paso, TX	09/08/1998	NAFTA–2,601	Sewing of jeans and shorts.
Russell Corporation (Co)	Midland, GA	09/08/1998	NAFTA–2,602	Casual, Activewear.
Ogden Atlantic Design (Wkrs)	Charlotte, NC	09/08/1998	NAFTA–2,603	Electronic components for printers.
Naxos of America (Wkrs)	Pennsauken, NJ	09/10/1998	NAFTA–2,604	Compact discs.
TexMex Trim (Co.)	Los Indios, TX	09/11/1998	NAFTA–2,605	Automatic shift knobs for automobiles.
Zilog (Wkrs)	Nampa, ID	09/11/1998	NAFTA–2,606	Computer chips.
Sensus Tech (USWA)	Uniontown, PA	09/10/1998	NAFTA–2,6077	Water meters.
Alcoa Fujikura Limited (Co.)	Owosso, MI	08/31/1998	NAFTA–2,608	Fuel systems harnesses, fuel pump & caps.
Scranton Export Clothing (UNITE) ..	Scranton, PA	09/10/1998	NAFTA–2,609	Sort & grade used clothing.
Teledyne Electronic Technologies (Co.).	City of Industry, CA	09/09/1998	NAFTA–2,610	Sensors.
Lane Punch (Wkrs)	New Berlin, WI	09/10/1998	NAFTA–2,611	Punch and die components.
Essex (UNITE)	Fall River, MA	09/09/1998	NAFTA–2,612	Women's coats.
Intercontinental Branded (Co.)	Buffalo, NY	09/14/1998	NAFTA–2,613	Men's suite and sport coats.
Terry Logging (Co.)	Elgin, OR	09/11/1998	NAFTA–2,614	Harvesting and delivery of logs.
Gem State Lumber (Wkrs)	Juliaetta, ID	09/11/1998	NAFTA–2,615	Dimension lumber.
Santa's Best (Comp)	Millville, NJ	09/09/1998	NAFTA–2,616	Santa Claus Suits.
PCC Merriman ()	Hingham, MA	09/14/1998	NAFTA–2,617	Metal Gears, Rings.
NACCO Materials Handling Group (Wkrs).	Fairview, OR	09/17/1998	NAFTA–2,618	Fork lifts.
Perm-O-Penn Exploration (Co.)	Midland, TX	09/15/1998	NAFTA–2,619	Oil and gas.
Windfall Products (Wkrs)	St. Marys, PA	09/16/1998	NAFTA–2,620	Powder metal parts.
Marcelle's Fashions (Wkrs)	El Paso, TX	09/11/1998	NAFTA–2,621	Pants, blouses, jackets and skirts.
Paris Accessories (UNITE)	Allentown, PA	09/16/1998	NAFTA–2,611	Women's belts.
Outdoor Recreation Group (The) (Co.).	Los Angeles	09/17/1998	NAFTA–2,623	Backpacks, duffles.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Jonathan Manufacturing (Co.)	Fullerton, CA	09/15/1998	NAFTA–2,624	Assembly of steel drawer slides.
Eastman Kodak (Co.)	Rochester, NY	09/21/1998	NAFTA–2,625	Health imaging film processors.
Russell Corporation (Co.)	Slocomb, AL	09/21/1998	NAFTA–2,626	Activewear, sweats, t-shirts.
Spalding Sports Worldwide (Wkrs)	Chicopee, MA	09/15/1998	NAFTA–2,627	Sporting goods.
ICI Explosives (OCAW)	Tamaqua, PA	09/21/1998	NAFTA–2,628	Electric detonators.
Sportknit (Co.)	Albertson, NC	09/18/1998	NAFTA–2,629	Knit shirts, pants and sport apparel.
Paramount Headwear (Wkrs)	Van Buren, MO	09/21/0098	NAFTA–2,630	Caps.
Preferred Electronics (Wkrs)	Hauppauge, NY	09/11/1998	NAFTA–2,631	Coils, transformers, power supplies.
General Electric (IUE)	Fitchburg, MA	09/08/1998	NAFTA–2,632	Production drawings.
Jasper Textile (Co.)	Jasper, FL	09/11/1998	NAFTA–2,633	Ladies sportswear.
Todd Products (Co.)	Brentwood, NY	09/22/1998	NAFTA–2,634	Switching power supplies.
Smith Corona (Wkrs)	Cortland, NY	09/22/1998	NAFTA–2,635	Typewriters and accessories.
Boise Cascade (Wkrs)	La Grande, OR	09/17/1998	NAFTA–2,636	Stud lumber.
Louis Allis (IUE)	Milwaukee, WI	09/23/1998	NAFTA–2,637	Electric motors and generators.
Martech Medical (Wkrs)	Harleysville, PA	09/25/1998	NAFTA–2,638	Medical products.
Cub Cadet, MTD (UFCW)	Brownsville, TN	09/24/1998	NAFTA–2,639	Lawn and garden tractors.
Russell Group (Co.)	Rockingham, NC	09/24/1998	NAFTA–2,640	Ladies undergarments.
Owens BriGem Medical (Co.)	Newland, NC	09/29/1998	NAFTA–2,641	Consumaple plastic anesthesia articles.
Banana Tree (The) (UNITE)	El Paso, TX	09/02/1998	NAFTA–2,642	Repair vacuum cleaner.
Summit Station (UNITE)	Pine Grove, PA	09/24/1998	NAFTA–2,643	Sportswear.
Fabcare (Co.)	Pickwick Dam, TN	09/30/1998	NAFTA–2,644	Denim jeans and laundry chemicals.
Lear Corporation (UAW)	Romulus, MI	09/09/1998	NAFTA–2,645	Seat assemblies.
Borden Foods (Co.)	Tolleson, AZ	09/23/1998	NAFTA–2,646	Dry pasta products.
Chicago Rawhide SKF USA (Co.)	Gastonia, NC	10/01/1998	NAFTA–2,647	Shafts sealing devices for automotive.
McCulloch Corporation (Wkrs)	Lake Havasu, AZ	09/30/1998	NAFTA–2,648	Machined parts.
International Assembly Specialist (Co.).	Tucson, AZ	10/01/1998	NAFTA–2,649	Computer keyboards, monitors etc.
Woodwork Corp. America (Wkrs)	Merrill, WI	09/30/1998	NAFTA–2,650	Synthetic bowling lanes accessories.
Vulcan Brunswick (Wkrs)	Antigo, WI	10/01/1998	NAFTA–2,651	Bowling pins.
Gibeck (Wkrs)	Indianapolis, IN	09/23/1998	NAFTA–2,652	Plastic tubes.
Litton Industries (Wkrs)	Garland, TX	10/02/1998	NAFTA–2,653	Optical elements.
Crown Cork and Seal (USWA)	Arlington, TX	10/05/1998	NAFTA–2,654	Plastic lined bottle caps.
Hvide Marine (Co.)	Temeculaerdale, CA	10/02/1998	NAFTA–2,655	Offshore towing.
Cross Creek Apparel (Co.)	Mt. Airy, NC	10/05/1998	NAFTA–2,656	Apparel sewing.
Miller Sports (Wkrs)	Walnut Ridge, AR	10/05/1998	NAFTA–2,657	Golf bags.
Cape Cod Spts. (UNITE)	New Bedford, MA	10/05/1998	NAFTA–2,658	Ladies jackets.
Photran (Wkrs)	Lakeville, MN	09/28/1998	NAFTA–2,659	Coated glass.
Coats American (Co.)	Denver, PA	09/29/1998	NAFTA–2,660	Sewing thread and zippers.
Coats American (Co.)	Monroeville, AL	09/29/1998	NAFTA–2,661	Sewing thread and zippers.
Sonoco Products (Co.)	Amsterdam, NY	10/08/1998	NAFTA–2,662	Paperboard.
National Fruit Product (Co.)	Winschester, VA	09/28/1998	NAFTA–2,663	Apple products.
North Star Steel (USWA)	Beaumont, TX	10/08/1998	NAFTA–2,664	Wire rod.
Horace Small (Wkrs)	Brownsville, TX	10/08/1998	NAFTA–2,665	Uniforms.
Becton Dickinson (Co.)	Detroit, MI	09/22/1998	NAFTA–2,666	Diagnostic.
Russell Corporation (Co.)	Marianna, FL	10/06/1998	NAFTA–2,667	Casual activewear.
Wolverine World Wide, Inc (Comp)	Rockford, MI	09/28/1998	NAFTA–2,668	Tanned Pigskin—Shoes.
Mitchell Manufacturing (Wrks)	Clare, MI	10/06/1998	NAFTA–2,669	Automotive Interiors.
Beloit Corp. (Wrks)	Dalton, MA	10/08/1998	NAFTA–2,670	Dilution Nozzles, Sheer Mixers.
Associated Plastics (Wrks)	Jonesboro, AR	10/08/1998	NAFTA–2,671	Fiberglass Cable Pull Boxes.
Lone Star Steel ()	Lone Star, TX	10/09/1998	NAFTA–2,672	Finished & Unfinished Pipe.
Creative Expressions Group ()	Indianapolis, IN	10/06//1998	NAFTA–2,673	Paper Party Goods.
Fasso DC Motor (Co.)	Parsons, TN	10/20//1998	NAFTA–2,674	Wiring for automotive.
Adams USA (Co.)	Monterey, TN	10/19//1998	NAFTA–2,675	Athletic equipment.
Curry Grain (Wkrs)	Filer, IA	10/16/1998	NAFTA–2,676	Dry beans, wheat.
General Electric (Wkrs)	Erie, PA	10/15/1998	NAFTA–2,677	DC motors and component parts.
Hamlin—Breed Tech (Co.)	Gwinn, MI	10/12/1998	NAFTA–2,678	Electronic components, automotive.
General Motors (UAW)	Kalamazoo, MI	09/29/1998	NAFTA–2,679	
W. Seitchik and Sons (UNITE)	Philadelphia, PA	10/16/1998	NAFTA–2,680	Men's tailored clothing.
Biltwell (UNITE)	St. Louis, MO	10/19/1998	NAFTA–2,681	Dress coats, suits and sport coats.
Thomaston Mills ()	Guifton, GA	10/19/1998	NAFTA–2,682	
Georgia Pacific Lebonite (WCIW)	Lebanon, OR	10/19/1998	NAFTA–2,683	Drill board.
Holloway Sportswear (Co.)	DeRiddler, LA	10/19/1998	NAFTA–2,684	Pullover jackets.

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02619]

Perm-O-Penn Exploration, Midland, Texas; Notice of Termination of Investigation

Purusant to Section 250 of the Trade Act of 1974, an investigation was initiated on September 15, 1998 on behalf of workers at Perm-O-Penn Exploration, Midland, Texas.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–29177 Filed 10–29–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I:

Maine
- ME980005 (FEB. 13, 1998)
- ME980010 (FEB. 13, 1998)
- ME980022 (FEB. 13, 1998)
- ME980037 (FEB. 13, 1998)

New York
- NY980002 (FEB. 13, 1998)
- NY980004 (FEB. 13, 1998)
- NY980013 (FEB. 13, 1998)
- NY980022 (FEB. 13, 1998)
- NY980033 (FEB. 13, 1998)
- NY980040 (FEB. 13, 1998)
- NY980042 (FEB. 13, 1998)
- NY980048 (FEB. 13, 1998)
- NY980049 (FEB. 13, 1998)

Volume II:

Maryland
- MD980001 (FEB. 13, 1998)
- MD980011 (FEB. 13, 1998)
- MD980012 (FEB. 13, 1998)
- MD980021 (FEB. 13, 1998)
- MD980034 (FEB. 13, 1998)
- MD980035 (FEB. 13, 1998)
- MD980036 (FEB. 13, 1998)
- MD980037 (FEB. 13, 1998)
- MD980042 (FEB. 13, 1998)
- MD980048 (FEB. 13, 1998)
- MD980054 (FEB. 13, 1998)
- MD980056 (FEB. 13, 1998)
- MD980057 (FEB. 13, 1998)
- MD980058 (FEB. 13, 1998)

Pennsylvania
- PA980004 (FEB. 13, 1998)
- PA980005 (FEB. 13, 1998)
- PA980006 (FEB. 13, 1998)
- PA980025 (FEB. 13, 1998)
- PA980026 (FEB. 13, 1998)
- PA980030 (FEB. 13, 1998)
- PA980031 (FEB. 13, 1998)
- PA980042 (FEB. 13, 1998)
- PA980063 (FEB. 13, 1998)

West Virginia
- WV980002 (FEB. 13, 1998)
- WV980003 (FEB. 13, 1998)
- WV980006 (FEB. 13, 1998)

Volume III:

Georgia
- GA980053 (FEB. 13, 1998)

Tennessee
- TN980001 (FEB. 13, 1998)
- TN980002 (FEB. 13, 1998)
- TN980041 (FEB. 13, 1998)
- TN980048 (FEB. 13, 1998)
- TN980062 (FEB. 13, 1998)

Volume IV:

Illinois
- IL980008 (FEB. 13, 1998)
- IL980017 (FEB. 13, 1998)
- IL980025 (FEB. 13, 1998)

IL980028 (FEB. 13, 1998)
IL980030 (FEB. 13, 1998)
IL980040 (FEB. 13, 1998)
IL980041 (FEB. 13, 1998)
IL980047 (FEB. 13, 1998)
IL980048 (FEB. 13, 1998)
IL980053 (FEB. 13, 1998)
IL980055 (FEB. 13, 1998)
IL980057 (FEB. 13, 1998)
IL980058 (FEB. 13, 1998)
IL980061 (FEB. 13, 1998)
IL980062 (FEB. 13, 1998)
IL980064 (FEB. 13, 1998)
IL980065 (FEB. 13, 1998)
IL980068 (FEB. 13, 1998)
Indiana
IN980001 (FEB. 13, 1998)
IN980002 (FEB. 13, 1998)
IN980003 (FEB. 13, 1998)
IN980004 (FEB. 13, 1998)
IN980005 (FEB. 13, 1998)
IN980006 (FEB. 13, 1998)
IN980016 (FEB. 13, 1998)
IN980017 (FEB. 13, 1998)
IN980018 (FEB. 13, 1998)
IN980020 (FEB. 13, 1998)
IN980059 (FEB. 13, 1998)
IN980060 (FEB. 13, 1998)
Michigan
MI980034 (FEB. 13, 1998)
MI980062 (FEB. 13, 1998)
MI980063 (FEB. 13, 1998)
MI980071 (FEB. 13, 1998)
MI980074 (FEB. 13, 1998)
Wisconsin
WI980008 (FEB. 13, 1998)
WI980010 (FEB. 13, 1998)
WI980013 (FEB. 13, 1998)
WI980024 (FEB. 13, 1998)

Volume V:

Kansas
KS980016 (FEB. 13, 1998)
Oklahoma
OK980014 (FEB. 13, 1998)

Volume VI:

Utah
UT980004 (FEB. 13, 1998)

Volume VII:

California
CA980002 (FEB. 13, 1998)
CA980028 (FEB. 13, 1998)
CA980031 (FEB. 13, 1998)
CA980032 (FEB. 13, 1998)
CA980033 (FEB. 13, 1998)
CA980034 (FEB. 13, 1998)
CA980035 (FEB. 13, 1998)
CA980036 (FEB. 13, 1998)
CA980037 (FEB. 13, 1998)
CA980038 (FEB. 13, 1998)
CA980039 (FEB. 13, 1998)
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Nevada
NV980002 (FEB. 13, 1998)
NV980003 (FEB. 13, 1998)
NV980004 (FEB. 13, 1998)
NV980005 (FEB. 13, 1998)
NV980007 (FEB. 13, 1998)
NV980009 (FEB. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 22 day of October 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–28887 Filed 10–29–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. U.S. Steel Mining Company, L.L.C.

[Docket No. M–98–81-C]

U.S. Steel Mining Company, L.L.C., 600 Grant Street, Pittsburgh, Pennsylvania 15219–2749 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Gary No. 50 Mine (I.D. No. 46–01816) located in Wyoming County, West Virginia. The petitioner proposes to use permanently installed spring-loaded locking devices on battery plugs on battery-powered equipment instead of using padlocks. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Old Dominion Energy, Inc.

[Docket No. M–98–82-C]

Old Dominion Energy, Inc., P.O. Box 1234, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; diesel-powered and electric face equipment) to its Mine No. 5 (I.D. No. 44–06890) located in Wise County, Virginia. The petitioner proposes to operate electric mobile equipment without canopies in seam heights up to 50 inches. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

3. Long Branch Energy

[Docket No. M–98–83-C]

Long Branch Energy, P.O. Box 776, Danville, West Virginia 25053 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 23 (I.D. No. 46–08637) located in Boone County, Virginia. The petitioner proposes to use a threaded ring and a spring loaded device on battery plug connectors on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. CONSOL of Kentucky, Inc.

[Docket No. M–98–84-C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Big Spring No. 16 Mine (I.D. No. 15–17957), E3RF Mine (I.D. No. 15–17894), Motts Branch Mine (I.D. No. 15–18012), and its Big Spring No. 17 Mine (I.D. No. 15–17996) all located in Knott County, Kentucky; and its Wiley (MC) Mine (I.D. No. 15–17220), E3-MC Mine (I.D. No. 15–17720), and its Loves Branch Mine (I.D. No. 15–17814) located in Letcher County, Kentucky. The petitioner proposes to derive a low and medium voltage three-phase, alternating current for use underground from a portable, diesel-driven generator

and to connect the neutral of the generator's transformer secondary through a suitable resistor to the frame of the diesel generator. The frame of the diesel generator would have solid connection to a borehole casing, a metal waterline, or a grounding conductor with a low resistance to earth. The petitioner proposes to follow specific terms and conditions listed in this petition for utilizing the proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Rustler Coal Company

[Docket No. M–98–85-C]

Rustler Coal Company, 66 South Tremont Street, Zerby, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Orchard Slope Mine (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge its batteries on the mine's locomotive during idle periods when all miners have been removed from the mine and to allow the intake air used to ventilate the charging station, located at the No. 1 chute of the active gangway level, to continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Kedco, Inc.

[Docket No. M–98–86-C]

Kedco, Inc., P.O. Box 1358, Gilbert, West Virginia 25621 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 2 (I.D. No. 46–08019) located in Mingo County, West Virginia. The petitioner proposes to use high-voltage (2,400 volt cables) to power continuous mining machines in and inby the last open crosscut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Solvay Minerals

[Docket No. M–98–07-M]

Solvay Minerals, P.O. Box 1167, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 [approved equipment (III mines)] to its Solvay Minerals, Inc. (I.D. No. 48–01295) located in Sweetwater County, Wyoming. The petitioner requests that previous petition for modification, docket number M–91–05-M, be amended to allow specific nonpermissible tools listed in this petition to be used in or beyond the last open crosscut. The petitioner states that prior to using these tools, the atmosphere would be examined for methane and would be continuously monitored with an approved instrument [MS240], [MX212], or MX250 CMX 270, CMX 271, and/or equivalent capable of providing both visual and audible alarms required in 30 CFR 57.22227 and according to the definition of mine atmosphere; that qualified personnel would physically attend the equipment when used in or inby the last open crosscut or in areas where methane may enter the air current; that the procedures in 30 CFR 57.22234 would be followed if 1.0 percent or more methane is detected; that the proposed changes to the petition would ensure the most up-to-date equipment, which would not only ensure compliance accuracy but would also meet or exceed the previous modification. The petitioner states that the alternative method of purchasing and using the most up-to-date equipment would allow them to continue ensuring the same level of protection that has been afforded to their employees in the past. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1998. Copies of these petitions are available for inspection at that address.

Dated: October 20, 1998.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–29082 Filed 10–29–98; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–158)]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Operations Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting Cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63FR27093, Notice Number 98–138, October 9, 1998.

PREVIOUSLY ANNOUNCED DATES OF MEETING: Tuesday, October 27, 1998, 8:30 a.m. to 4:30 p.m. and Wednesday, October 28, 1998, 8:30 a.m. to 4:30 p.m. The meeting will be rescheduled.

FOR FURTHER INFORMATION CONTACT: Dr. J. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5792.

Dated: October 26, 1998.

Lori B. Garver,

Acting Association Administrator for Policy and Plans.

[FR Doc. 98–29052 Filed 10–29–98; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–277]

Peco Energy Company; Peach Bottom Atomic Power Station Unit 2; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by PECO Energy Company (the licensee), for an amendment to Facility Operating License No. DPR–44 issued to the licensee for operation of the Peach Bottom Atomic Power Station, Unit 2 , located in York County, Pennsylvania. Notice of Consideration of Issuance of the amendment was published in the **Federal Register** on September 9, 1998 (63 FR 48261).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to add a footnote to TS Section 5.6.5.b.1.

The NRC staff has concluded that a part of the licensee's request cannot be granted. The licensee was notified of the Commission's partial denial of the proposed change by conference calls on

September 2 and 9, 1998, and by letter dated October 26, 1998.

By November 30, 1998, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. W. Durham, Sr., Esquire, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 10, 1998, as supplemented by two letters dated September 11, 1998, and (2) the Commission's letter to the licensee dated October 26, 1998.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 26th day of October 1998.

For the Nuclear Regulatory Commission

Robert A. Capra,

Project Director, Project Directorate I–2, Division of Reactor Projects—l/ll, Office of Nuclear Reactor Regulation.

[FR Doc. 98–29104 Filed 10–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–LA–R; ASLBP Docket No. 99–754–01–LA–R]

Yankee Atomic Electric Company, Yankee Nuclear Power Station; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR § 2.271 (1995) the Atomic Safety and Licensing Board for Yankee Atomic Electric Company (Yankee Nuclear Power Station), Docket No. 50–029–LA–R, is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer as Chairman of the Licensing Board in place of Administrative Judge James P. Gleason.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Esquire, Chairman
Thomas D. Murphy
Dr. Thomas S. Elleman

All Correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR § 2.701 (1998).

The address of the new Chairman is: Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland this 26th day of October 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–29103 Filed 10–29–98; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), this notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the new collection of the Career Information Consultants waiver form. A copy of the information collection may be obtained from Cindy Slone, Office of Returned Volunteer Services, Peace Corps, 1111 20th Street, NW, Washington DC 20525. Ms. Slone may be called at (202) 692–1430. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Day Brochure/ Form.

Need for and use of the Information: This form is completed voluntarily by Returned Peace Corps Volunteers and educators throughout the country. This information will be used by WWS to identify individuals interested in participating in the Peace Corps's annual Peace Corps Day program. Enrollment in this program also fulfills the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program.

Respondents: Returned Peace Corps Volunteers and career professionals throughout the public and private work force in the United States.

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 150 hrs.

b. *Annual record keeping burden:* 0 hrs.

c. *Estimated average burden per response:* 3 min.

d. *Frequency of response:* annually.

e. *Estimated number of likely respondents:* 3,000.

f. *Estimated cost to respondents:* $0.00.

This notice is issued in Washington, DC on October 19, 1998.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–29138 Filed 10–29–98; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget. (0420–0007)

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Peace Corps Request for Information Card

(PC–1741). The initial **Federal Register** notice was published on November 21, 1996 (pp. 59251). A copy of the information collection may be obtained from Michael Chapman, Director of Communications, Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Mr. Chapman may be contacted by telephone at 202–692–2212. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden the collection of information those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Request for Information Card.

Need for and use of this information: The Peace Corps needs this information in order to identify prospective applicants for Volunteer service. The information is used to determine what program specific information to send to interested individuals.

Respondents: Individuals interested in learning more about Peace Corps service.

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. Annual reporting burden ...	1,021 hours.
b. Annual record keeping burden.	0 hours.
c. Estimated average burden per response.	1.75 min.
d. Frequency of response	one time.
e. Estimated number of likely respondents.	35,000.
f. Estimated cost to respondents.	$.0.37.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–29139 Filed 10–29–98; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget. (0420–0005).

SUMMARY: The Associate Director for Management invites comment on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the office of Management and Budget a request to approve the continued use of the Peace Corps Volunteer Application Form (PC–1502). The initial **Federal Register** notice was published on. A copy of the information collection may be obtained from Judy Harrington, Director of Volunteer Recruitment and Selection, Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Ms. Harrington may be contacted by telephone at 202–692–1802. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden the collection of information those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application Form.

Need for and use of this information: The Peace Corps needs this information in order to identify prospective applicants and process the applicants for Volunteer service. The information is used to determined qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps service.

Respondents obligation to reply: Voluntary, but required to obtain benefits.

Burden to the public:

a. Annual reporting burden	240,000 hours.
b. Annual record keeping burden.	0 hours.
c. Estimated average burden per response.	8 hours.
d. Frequency of response ...	one time.
e. Estimated number of likely respondents.	30,000.
f. Estimated cost to respondents.	$102.72.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–29140 Filed 10–29–98; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S
SEC File No. 270–315, OMB Control No. 3235–0357

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension on the following:

Regulation S is a set of rules governing offers and sales made outside the United States without Securities Act registration. It does not directly impose any information collection burdens and therefore is assigned only one burden hour for administrative convenience.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 23, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29121 Filed 10–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 2, 1998.

A closed meeting will be held on Thursday, November 5, 1998, at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject mater of the closed meeting scheduled for Thursday, November 5, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 28, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29316 Filed 10–28–98; 3:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40596; File No. SR–CBOE–98–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, By the Chicago Board Options Exchange, Inc. To Allow the Chairman of the Equity Floor Procedure Committee, or the Chairman's Designee, To Increase the Eligible Order Size for Entry Into RAES

October 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 21, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On October 5, 1998, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to permit the Chairman of the appropriate Floor Procedure Committee (''Committee''), or the Chairman's designee, to exercise the authority of the Committee to determine the size of orders eligible for entry into CBOE's Retail Automatic Execution System (''RAES'') in certain circumstances.[3]

The text of the proposed rule change is set forth below. Additions are italicized.

CHAPTER VI

Doing Business on the Exchange Floor

Section A: General

* * * * *

RAES Operations in Equity Options

Rule 6.8 No change.

. . . Interpretations and Policies:

.01–.04 No change.

.05 The Chairman of the appropriate Floor Procedure Committee or the Chairman's designee may exercise the authority of the appropriate FPC under paragraph (a)(i) of the Rule to increase the size of orders eligible for RAES when the Chairman or his designee believes that the action is in the interest of alleviating a potential backlog of unexecuted orders in situations where a particular class of options is experiencing a large influx of orders and provided the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to increase the RAES eligible order size for that subsequent day. Any decisions made by the Chairman or his designee to increase the RAES eligible order size for a particular option class for consecutive days will be reviewed by the EFPC at its next regularly scheduled meeting.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 6.8(a)(i) states that ''the appropriate Floor Procedure Committee (''FPC'') shall determine the size of orders eligible for entry into RAES.'' Paragraph (e) states that ''[e]ligible orders must be market or marketable limit orders for twenty or fewer contracts on series placed on the system. The appropriate FPC, in its discretion, may determine to restrict eligible orders, including but not limited to lowering contract limits.'' Pursuant to its discretion under Exchange Rule 6.8, the Equity Floor Procedure Committee (''EFPC'') has established an eligible RAES order size

[1] 15 U.S.C. 78s(b)(1).

[2] The proposed rule change was originally filed under Section 19(b)(3)(A) of the Exchange Act. Pursuant to the Commission's request, the Exchange amended the proposed rule change to file it under Section 19(b)(2) of the Exchange Act. *See* letter from Timothy H. Thompson, Director, Regulatory Affairs, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated September 15, 1998.

[3] RAES accepts, through the Exchange's Order Routing System, small public customer market or marketable limit orders for automatic execution. An Exchange market-maker on RAES is assigned as the contraparty to these trades.

of ten contracts for most equity options traded on the floor.

The Committee has discovered through experience in overseeing the operation of RAES in equity options, however, that it is often beneficial to temporarily raise the eligible order size to the allowable limit of twenty contracts in situations where a particular class of equity options is experiencing a large influx of orders. By increasing the eligible order size, a larger percentage of the order flow can be filled immediately at the Exchange's quotes or at the National Best Bid or Offer (''NBBO'').[4] This, in turn, will allow the trading crowd to concentrate on filling the non-RAES eligible orders in a more expeditious manner.

The decision to increase the RAES eligible order size to address these high volume situations must be made quickly to be effective. In addition, the Committee believes the increase should only be made for that period of time in which the class is in a high volume situation; and so, the situation requires monitoring. Because the EFPC commonly consists of twenty or more members who conduct business in all parts of the floor, it is not practicable to provide notice to all the members of the Committee and convene a meeting to make these decisions. It is also not practicable to expect these members to monitor the situation when they are trying to conduct business on the floor that requires their attention. Intra-day meetings are not only impracticable to convene but would distract these members from the conduct of their business on the floor.

Consequently, the EFPC has determined to delegate its authority under Exchange Rule 6.8 to the Chairman of the EFPC, or to the Chairman's designee, to increase the eligible order size for RAES provided that the Chairman or his designee believes the action is in the interest of alleviating a potential backlog of unexecuted orders in situations where a particular class of options is experiencing a large influx of orders and provided the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to increase the RAES eligible order size for that subsequent day. Any decisions made by the Chairman or his designee to increase the RAES eligible order size for a particular option class for consecutive days will be reviewed by the EFPC at its next regularly scheduled meeting. After reviewing these decisions the EFPC can provide guidance to the Chairman or his designee about the use of this authority if they feel it is appropriate.

2. Statutory Basis

By allowing the Chairman of the EFPC or his designee to make decisions to increase the eligible order size for RAES, the Exchange can help to prevent the backlog of executable orders in an efficient manner. The Exchange believes, therefore, the filing is consistent with and furthers the objectives of Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–37 and should be submitted by November 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29117 Filed 10–29–98; 8:45 am]

BILLING CODE 8010–01–M

[4] The Exchange recently received approval of a rule change that provides that in classes designated by the EFPC, RAES orders will be executed at the NBBO to the extent the NBBO is no more than one tick better than the CBOE quote. Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (approving SR–CBOE–98–13).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40597; International Series Release No. 1163; File No. SR–NYSE–98–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of DaimlerChrysler AG

October 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1998, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt two interpretations under its rules to accommodate the trading of DaimlerChrysler AG (''DaimlerChrysler''). Daimler-Benz AG (''Daimler-Benz'') is combining with Chrysler Corporation (''Chrysler'') in a series of transactions pursuant to which Daimler-Benz will ultimately be merged into DaimlerChrysler and Chrysler will become a wholly owned subsidiary of DaimlerChrysler.

DaimlerChrysler is a stock corporation incorporated under the laws of the Federal Republic of Germany with a single class of common stock—ordinary shares, no par value (''Ordinary Shares'')—that will trade on both the NYSE and the Frankfurt Stock Exchange, as well as on other exchanges around the world. The register for the Ordinary Shares will be administered by Deutsche Bank AG, DaimlerChrysler's transfer agent and registrar in Germany, and The Bank of New York, DaimlerChrysler's transfer agent and registrar in the United States. Transactions in the Ordinary Shares will be cleared through the central clearing systems of both countries. The Depository Trust Company (''DTC'') in the United States and Deutsche Börse Clearing in Germany.

Although the Ordinary Shares are issued by a Germany company, they have many characteristics that are similar to shares of common stock issued by U.S. companies. For example, while most German stocks are in bearer form, DaimlerChrysler shares will be in registered form, the same as U.S. shares. However, the form of the stock certificate will have certain characteristics more similar to certificated shares of common stock of a German company than of a U.S. company. In addition, DaimlerChrysler will pay dividends and call stockholder meetings and conduct voting at such meetings generally in accordance with German practices. This requires the Exchange to adopt two interpretations of its rules to accommodate the listing and trading of DaimlerChrysler:

Certificates: The Frankfurt Stock Exchange rules governing stock certificates are somewhat different than the Exchange's rules. To accommodate those differences, the NYSE is proposing to adopt an interpretation of Paragraphs 501.03 and 502 of the Exchange's Listed Company Manual (the ''Manual'') so the DaimlerChrysler certificates will meet the NYSE's requirements for certificates.

Proxies: DaimlerChrysler will solicit proxies in a manner that combines characteristics of both the German and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Manual to accept DaimlerChrysler's proposed proxy procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to provide two interpretations under the Exchange's rules to accommodate the listing and trading of DaimlerChrysler. These interpretations pertain to DaimlerChrysler's share certificates and voting procedures.

Certificates

The DaimlerChrysler share certificates will conform in most respects to the requirements in Paragraphs 501.03 and 502 of the Manual. The only exceptions are that the vignettes (pictures) will not be fully steel engraved and the form of endorsement will provide for German registry. The Exchange believes that these are relatively minor inconsistencies with current requirements, and one purpose of the rule change is to accept the DaimlerChrysler share certificates as proposed.

Voting

Under German law, only stockholders who hold shares on the date of the stockholders meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, Exchange rules require 10 days' notice of a record date and 30 days between record and meeting date. DaimlerChrysler will modify its current practice to accommodate the notice period in the United States. In Germany, there already are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. DaimlerChrysler has agreed to prepare and mail stockholder meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the United States in the currently accepted time frame. The company also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. This could lead to double voting. To address this issue, both The Bank of New York as transfer agent (the ''Transfer Agent'') and Automatic Data Processing (''ADP''), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is mailed out and the date of the meeting. These procedures will be designed (i) to cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. The second purpose of the proposed rule change is to accept these procedures as being in compliance with NYSE procedures.

Both the Transfer and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the Transfer Agent and ADP will each produce a current shareholder list. If holders no longer appear on the list, then votes attributed to proxies submitted by them will be canceled. If new holders appear, proxy materials will be mailed to them by the Transfer Agent, in the case of registered owners, and by ADP, in the case of beneficial owners.

The shareholders lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders on a best efforts basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automatic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be

permitted to exceed the total position so held.

In addition, DaimlerChrysler shareholders can vote in person at a shareholders' meeting. Under German law, a shareholder must give the company notice of his or her intent to vote in person no later than three business days prior to the meeting, and the person must be a record holder on the meeting date.[3]

(2) Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[4] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[3] With respect to dividends, DaimlerChrysler's record date also will be the date of the company's annual meeting (like most German companies, DaimlerChrysler pays dividends annually). This will make it impossible to trade the stock ''ex-dividend'' on the Exchange in the normal course. Accordingly, the Exchange will use its existing flexibility under Exchange Rule 235 and Paragraph 703.02 of the Manual to trade DaimlerChrysler stock with ''due bills'' for the period that the stock normally would trade ex-dividend. This is a process pursuant to which the seller will receive the dividend, but is obligated to pay the dividend to the buyer of the shares. This process will be transparent to investors since due bills net out in the clearing process. To avoid any potential confusion as to the ''ex-dividend date,'' the Exchange will endeavor to transmit notices to member organizations well in advance of the dividend declaration date.

The ex-dividend date for DaimlerChrysler shares will be the day following the record date. That is in contrast to the Exchange's typical practice, in which the ex-dividend date is two business days prior to the record date.

[4] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–37 and should be submitted by November 20, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of DaimlerChrysler shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of DaimlerChrysler (rather than American depositary receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to permit it to list DaimlerChrysler shares despite the share certificates' differences from the Manual's standards for engraving and endorsements. The interpretation is necessary to accommodate the unique aspects to DaimlerChrysler's share certificates. Moreover, the change is minor, and will not impinge on investor protection and the public interest.

The Commission also believes that it is reasonable for the NYSE to interpret the Manual to accept DaimlerChrysler's proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, DaimlerChrysler will give shareholders the same type of advance notification provided for in the Manual. Moreover, DaimlerChrysler's proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding DaimlerChrysler appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**. According to the Exchange, the trading of DaimlerChrysler shares on a ''when issued'' basis is scheduled to commence as early as October 26, 1998. The Exchange states that approval of the rule change by the date will facilitate the maintenance of an orderly market in the shares of DaimlerChrysler. The Exchange further states that without accelerated approval of this proposed rule change, there will be uncertainty in the market regarding the form of DaimlerChrysler certificates and the procedures governing DaimlerChrysler proxies.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the NYSE's proposal on an accelerated basis to permit the public to begin to trade the newly issued DaimlerChrysler shares on the NYSE without doubts about whether the share certificates are acceptable under NYSE rules, and without questions about how DaimlerChrysler will conduct proxy voting.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–NYSE–98–

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

37) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29120 Filed 10–29–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40595; File No. SR–0CC–98–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Stock Fund Options

October 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 22, 1998, The Options Clearing Corp. (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will amend its rules and by-laws which govern options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stocks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's rules and by-laws governing the issuance, clearance, and settlement of options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stocks.[3] Specifically, the proposed rule change will introduce a defined term ''stock fund shares'' to cover such publicly traded interests and a defined term ''stock fund option'' to cover the options thereon and will substitute these defined terms where appropriate in the by-laws and rules. For example, the proposed rule change will abbreviate Interpretation and Policy .01 under Section 9 of Article VI of the by-laws through the use of the newly defined term stock fund option.

In addition, the proposed rule change will provide for adjustments to the terms of stock fund options for distributions of capital gains with respect to the underlying stock fund shares. The proposed rule change will add Interpretation and Policy .08 to Section 11 of Article VI of the by-laws to reflect that the terms of stock fund options will be adjusted for all capital gains distributions, regardless of size, by the issuer of the underlying stock fund shares.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[4] because the proposed changes will promote the prompt and accurate clearance and settlement of transactions in stock fund options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the amendments should make it clear that stock fund options are stock option contracts for all purposes under OCC's rules and by-laws. Furthermore, the rule change should promote the prompt and accurate clearance and settlement of stock fund options by providing for adjustments to the terms of stock fund options for capital gains distributions with respect to the underlying stock fund shares.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Pursuant to File No. OCC–97–02, OCC amended its rules to provide for the clearance and settlement of stock fund options as proposed for trading by the American Stock Exchange (''AMEX'').[6] The changes proposed in this rule filing will make technical changes that will facilitate the clearance and settlement of AMEX's product which is scheduled to begin trading in November, 1998.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC

[3] The Commission approved OCC's issuance, clearance, and settlement of such options in Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR–OCC–97–02].

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Supra,* note 3.

refer to File No. SR–OCC–98–08 and should be submitted by November 20, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–98–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29118 Filed 10–29–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40598; File No. SR–PCX–97–48]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Market Maker Participation in the Pacific Exchange's Automatic Execution System for Options (''Auto-Ex'')

October 23, 1998.

I. Introduction

On December 18, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change which amended its rules relating to market maker participation in the Exchange's automatic execution system for options (''Auto-Ex''). On February 27, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

A notice of the proposed rule change appeared in the **Federal Register** on March 10, 1998.[4] The Commission received no comment letters addressing the proposed rule change. On October 7, 1998, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change. Also, Amendment No. 2 is approved on an accelerated basis.

II. Description of the Proposal

Rules 6.87, 10.13, and 10.14 pertain to the Exchange's market maker eligibility standards for participation in the Auto-Ex system. PCX has proposed that a provision addressing joint accounts be added to Rule 6.87(d)(1) stating that participants in a joint account may log onto Auto-Ex in a trading crowd outside of their primary appointment zones, but only if they are substituting for another participant in the same joint account, where participation in Auto-Ex trades at such station would have been appropriate for the substituted party, and they have obtained the approval of two Floor Officials.[6] Moreover, the Exchange is proposing to clarify this rule by stating that market makers who have not been assigned a primary appointment zone may not participate on the Auto-Ex system, and further, that all Auto-Ex transactions will count toward a market maker's in person and primary appointment zone requirements.

Rule 6.87(d)(3), as proposed, will require that, unless exempted by two Floor Officials, market makers may log onto Auto-Ex only in person and may continue on the system only so long as they are present in that trading crowd. Moreover, absent an exemption from the foregoing limitation, market makers may not remain on Auto-Ex, and must log off when they have left the trading crowd, unless the departure is for a brief interval (*i.e.,* no longer than 15 minutes, under normal circumstances).[7]

Proposed Rule 6.87(d)(4) will eliminate language which currently states that if a market maker logs onto Auto-Ex during Expiration Week, then he is required to remain on the system for the duration of that Expiration Week. When the Auto-Ex rule was initially adopted, there was some concern that there might be inadequate market maker participation on Auto-Ex during Expiration Week. Based on several years' experience, the Exchange now believes that there is no lack of market maker participation on the Options Floor that justifies a need for the Expiration Week requirement. If there is inadequate Auto-Ex participation in a particular options issue,[8] however, Floor Officials have the authority to require market makers to log onto Auto-Ex.[9]

There are two limited situations, however, in which participation in the Auto-Ex system is mandatory—both are proposed to be codified in the rule. Under section (d)(4) of Rule 6.87, a market maker who has logged onto Auto-Ex at any time during a trading day must participate on the Auto-Ex system in that option issue whenever present in that trading crowd during that trading day. Under subsection (d)(5), market makers may not log off the Auto-Ex wheel during the first ten minutes of a ''fast market'' [10] that has been declared in an issue traded ''on that wheel,'' [11] in the absence of an exemption from two Floor Officials.

PCX proposes that subsection (e) of Rule 6.87 be amended by adding a provision specifically prohibiting market makers from ''directed trading'' [12] of option contracts resulting

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[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Mignon McLemore, Attorney, SEC, dated February 26, 1998 (''Amendment No. 1''). In Amendment No. 1, PCX explains the disciplinary procedure under both the Minor Rule Plan (''MRP'') and the Summary Sanction Procedure (''SSP'') and how ''the wheel'' rotation operates.

[4] Securities Exchange Act Rel. No. 39707 (March 3, 1998), 63 FR 11700.

[5] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Mignon McLemore, Attorney, SEC, dated October 6, 1998 (''Amendment No. 2''). In Amendment No. 2, PCX: deletes a proposal made in the initial rule submission that would have removed rule language stating that a market maker logged onto Auto-Ex but who leaves the trading crowd is responsible for trades allocated to him during his absence; provides PCX with the authority to log a market maker off Auto-Ex if he has left the trading crowd for more than a brief interval; and makes certain minor clarifications regarding the operation of the proposal.

[6] Floor Officials may exercise their discretion in determining whether one market maker may substitute for another. Substitution is usually only allowed when a market maker is on vacation or out sick. However, there may be cases when the market maker being substituted for may actually be on the floor but not in the joint account crowd. Telephone call between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX and Mignon McLemore, Attorney, SEC, August 24, 1998.

[7] *Compare* Securities Exchange Act Rel. No. 38881 (July 28, 1997), 62 FR 41987 (August 4, 1997). The Philadelphia Stock Exchange, Inc. amended Advice F–24 to state that Registered Options Traders must sign-off the Wheel when leaving the Wheel assignment area for more than a brief interval, which means five minutes or less, or in matters of a dispute, the amount of time it takes to call in a Floor Official and inform him of the issue at hand. *Compare* CBOE Rules 24.16(c)(iii) (stating that any member of the joint account that has been logged onto RAES must log off whenever he leaves the SPX trading crowd for other than a brief interval) and 24.17(a)(iv) (stating that an individual member who is logged onto RAES must log off whenever he leaves the trading crowd).

[8] In PCX Rules 6.87(d)(1), (2), (4), and (6) the term ''issue'' or ''option issue'' is used instead of or replaces the term ''class.'' The Exchange believes that ''class'' does not encompass all options of the underlying stock. Thus, for purposes of this proposal, the term ''issue'' or ''option issue'' refers to all types of option contracts (puts and calls) of the same class of options covering the same underlying security. *See* Amendment No. 2, note 5 *supra.*

[9] PCX Rule 6.87(d)(6).

[10] PCX Rule 6.28.

[11] *See* note 33 *infra.*

[12] ''Directed trading'' is a violation of Rule 6.73 (''Manner of Bidding and Offering''), which provides in part: ''All bids and offers shall be

Continued

from recent executions over Auto-Ex. The rule states that market makers who receive an execution through Auto-Ex may not re-direct the option contracts from that trade to another market maker without first giving the other Members in the trading crowd an opportunity to participate.

Subsection (f) of Rule 6.87, as proposed, adds a provision on price adjustments to codify procedures outlined in the Exchange's initial proposal to conduct the POETS pilot.[13] The Commission permanently approved the pilot in 1993.[14] The provision states that due to instantaneous execution, an incorrect quote appearing on the screen may result in an Auto-Ex trade at an incorrect price, and that an Auto-Ex trade executed at an erroneous quote should be treated as a trade reported at an erroneous price. It also states that the price of the Auto-Ex trade should be adjusted to reflect accurately the market quote at the time of execution, and that this will result in public customers and market makers receiving correct files at prevailing market quotes through Auto-Ex. It further states that the determination as to whether an Auto-Ex trade was executed at an erroneous price is to be made by two Floor Officials, and that in making their determination, the Floor Officials should consider such factors as: (1) The length of time the allegedly incorrect quote was displayed; (2) whether any non-Auto-Ex trades were effected at the same price as the Auto-Ex transaction; and (3) whether any members of the trading crowd were aware of orders actively being represented in the trading crowd that appear to have been ''printed through'' by the Auto-Ex trade.[15]

Finally, Rules 10.13 and 10.14 have been amended to expressly outline the fines to be levied and disciplinary measures to be taken in the event of noncompliance with the log-off requirement established in Rule 6.87(d)(3). A market maker who fails to comply with the log-off requirement will be subject to the following fines under the Exchange's MRP.[16] If the number of failures is between one and two during a twelve-month period, the fine is $100 per violation; for between three and five failures in a twelve-month period, the fine is $250 per violation; and for six or more failures in a twelve-month period, the fine is $500 per violation.[17] The Exchange's SSP [18] has also been amended to incorporate violations of the log-off requirement. Under the relevant procedures, two Floor Officials may summarily fine a Member for a designated rule violation if certain procedures are followed.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 6(b)(5) [19] of the Act.[20] Pursuant to Section 6(b)(5), the proposed rule change benefits the public because refining the eligibility criteria to reflect the actual trading environment of the Exchange should improve the operation of the POETS system, thereby contributing to the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposal should help to ensure adequate market maker participation in Auto-Ex, which should, in turn, contribute to the effective and efficient execution of public investor orders at the best available price.

The Commission believes the proposed joint account provision will provide more continuity and depth to the Auto-Ex system as the eligibility criteria have been expanded to allow a market maker to participate outside his appointment zone under the limited circumstance where he is substituting for another market maker in the same joint account. The Commission understands that the purpose of this rule is to allow a market maker to participate in a joint account that may be outside his primary appointment zone when the other joint account participant is unavailable to participate. For example, if the market maker is on vacation or out sick, he would be deemed unavailable and substitution, in these cases, would be allowed.[21]

The Commission believes that PCX's proposed codification of Auto-Ex log-on and log-off procedures should clarify the responsibilities and duties of market makers and Floor Officials. The Commission notes that the proposal should prevent inequities that can occur in the system if wheel-assigned trades are allocated to market makers, who are logged on the system, but not in the trading crowd. While current market maker participation levels appear to make the mandatory log-on requirement during Expiration Week obsolete, the Commission suggests that the Exchange monitor participation levels, especially during market declines and if necessary, exercise its authority to ensure substantial participation.

The Commission believes extending the ''directed trading'' [22] prohibition to transactions executed over Auto-Ex will promote just and equitable principles of trade, as every member in the trading crowd will be given an opportunity to participate in the transactions. Moreover, extending the prohibition of directed trading to Auto-Ex transactions should serve as a deterrent to price collusion as a market maker cannot designate one member in the trading crowd to accept certain bids and offers.

The Commission believes the addition of the provision on price adjustments provides the Exchange with the flexibility to quickly correct an Auto-Ex trade, if two Floor Officials determine that it was executed at an incorrect price. The rule's procedures protect the public customer and market maker by ensuring that once an erroneous quote has been detected, their orders are filled according to prevailing market quotes through Auto-Ex. Moreover, the rule provides objective criteria for the Floor Officials to use in determining whether an Auto-Ex trade was executed at an erroneous price, which should assist them in determining if and when price adjustments should be made. Furthermore, this provision codifies similar procedures originally outlined in the POETS pilot, [23] which was subsequently approved in 1993.[24]

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general ones and shall not be specified for acceptance by particular members.''

[13] Securities Exchange Act Rel. No. 27423 (November 6, 1989), 54 FR 47434 (November 14, 1989) (notice proposing to conduct POETS pilot) at Exhibit 4.

[14] Securities Exchange Act Rel. No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993).

[15] *Compare* CBOE Rule 24.15 (a)(ii) (stating that a trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval).

[16] PCX Rule 10.13.

[17] *Compare* CBOE Rules 24.16(h) and 24.17(g) and Phlx Rule 970 and Floor Procedure Advice F–24 (fee schedules for failure to adhere to log on and off requirements).

[18] PCX Rule 10.14.

[19] Section 6(b)(5) requires the Commission to determine that a registered national securities exchange's rules are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[20] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The changes made to the eligibility criteria should provide depth to the market by ensuring that a contra-party is available to interact with the customers' orders. This added depth should result in faster customer trade executions, thus improving efficiency in the marketplace. This added depth to the Auto-Ex system should also promote competition. As these trades are executed at the NBBO, the market maker receives the spread on these transactions, which should provide incentive for market makers to participate in the system. 15 U.S.C. 78c(f).

[21] Telephone call between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX and Mignon McLemore, Attorney, SEC, August 24, 1998.

[22] PCX Rule 6.73.

[23] *See* note 13 *supra.*

[24] *See* note 14 *supra.*

The Commission believes that the Exchange's proposed changes to its minor rule plan are reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources in light of the minor nature of the violation. The Commission notes that violations of the Exchange's log-off requirement are objective and easily verifiable, and thus, lend themselves to the use of expedited proceedings. Specifically, the issue of whether a market maker has left the trading crowd for more than the fifteen minute interval may be determined objectively and adjudicated quickly without complicated evidentiary and interpretive inquiries. The Commission believes that the proposed fine schedule and the SSP should serve to encourage consistent market maker participation in Auto-Ex and to deter repeated violations of the Exchange's rules.

The Commission was initially concerned, however, that the Exchange's amended fine schedules and disciplinary procedures might cause a member to be found in violation of Rule 6.87(d)(3) and fined under both the MRP and the SSP. In response, the Exchange states that its Department of Options Compliance coordinates the processing of all violations committed on the Options Floor under both the MRP and the SSP.[25] Amendment No. 1 further states that before any summary sanction is issued, Floor Officials must contact Options Compliance to determine whether the Member has previously violated the rule, so that the amount of the sanction may be assessed. Options Compliance therefore, will have been notified of the action taken. In addition, if Floor Officials issue a sanction under the SSP, the floor citation must contain an indication of the amount of the fine pursuant to Rule 10.14(a)(3). This indication will serve to notify Options Compliance that the matter has been resolved.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 2

The Commission has reviewed carefully the Exchange's Amendment No. 2 and believes, for reasons set forth below, the amendment is consistent with the requirements of Section 6 of the Act,[26] and the rules and regulations thereunder applicable to a national securities exchange.[27] Specifically, the Commission believes the amendment is consistent with Section 6(b)(5)[28] of the Act, because it will facilitate the operation of the Auto-Ex system, which will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing and settling, and processing information with respect to facilitating transactions in securities.

The joint account provision in Rule 6.87(d)(1) attempted to clarify that *all* Auto-Ex transactions would count toward a market maker's in-person and primary appointment zone requirements. (emphasis added) The Commission believed this language could have been misinterpreted to mean all Auto-Ex transactions, including those in joint accounts, would count toward the primary appointment zone requirement, even those transactions in options issues[29] which were not assigned to the market maker's primary appointment zone. Amendment No. 2 clarifies that if an option issue is included in a market maker's primary appointment zone, then Auto-Ex transactions in that issue that are made on behalf of the market maker will count towards the market maker's primary appointment zone requirement.[30]

In the originally submitted proposed rule change, the Exchange proposed eliminating language in Rule 6.87(d)(3) that holds market makers responsible for trades executed through Auto-Ex during their absence from the trading crowd as well as for all Auto-Ex-eligible issues assigned to the particular wheel.[31] The Exchange failed to provide any written justification for this proposed change. Upon the request of Commission staff, PCX agreed to withdraw this proposed change.

In Amendment No. 2, the Exchange proposed giving itself the authority to log a market maker off Auto-Ex if a market maker has left the trading crowd or floor for more than a brief interval.[32] This provision is consistent with the requirement that only market makers physically present in the trading crowd are entitled to trade on Auto-Ex. It may also help reduce unintended position exposure that can be incurred by a market maker who mistakenly forgets to log off Auto-Ex.

The proposed requirement in Rule 6.87(d)(3) that the market maker be obligated to honor trades executed through Auto-Ex for all Auto-Ex eligible issues assigned to the particular wheel has been removed, because the wheel no longer operates as it did when this requirement was initially promulgated. According to Amendment No. 2, each morning before the opening, the system will ''shuffle'' the order of market makers on an issue-by-issue basis. For example, the order of the market makers may be A, B, C for issue no. 1 and A, B, C for issue no. 2, etc. The first Auto-Ex trade of the day will be assigned at random for each issue (*e.g.*, in issue no. 1, the first trade may be assigned to C), but each subsequent trade will be assigned in order, on a rotating basis (*e.g.*, A, B, C, A, B, C, etc.). The same procedure is followed for each issue, so in effect, the number of issues assigned to a post determines the number of ''wheels'' at that post. Each wheel rotates separately from the others and trades in one issue will have no impact on the order in which trades are assigned in another issue at the same post.[33]

Furthermore, the Auto-Ex system also allow issues at a trading post to be split up among the crowd.[34] For example, A may only be on Auto-Ex for issues 1 and 2, while B and C may be on the system for issues 3 through 10.[35] Therefore, because a market maker may not be assigned all of the issues at a particular trading post, the language obligating market makers ''to honor trades for all Auto-Ex eligible issues assigned to a particular wheel'' is inaccurate and misleading, given how the wheel operates. Thus, the language has been removed.[36]

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 addresses a Commission concern that a market maker will not be able to circumvent the primary appointment zone requirements by using transactions in a joint account not in his primary appointment zone to meet his participation requirements. Thus, the joint account must be in the substituting market maker's primary appointment zone for the transactions to count toward his appointment zone requirements. The Commission was also concerned that the proposed rule change did not address the possibility of

[25] *See* Amendment No. 1, note 3 *supra.*

[26] 15 U.S.C. 78f.

[27] *See* note 20 *supra.*

[28] 15 U.S.C. 78f(b)(5).

[29] *See* note 8 *supra.*

[30] *See* Amendment No. 2, note 5 *supra.*

[31] *See* note 33 *infra.*

[32] *See* Amendment No. 2, p. 1, note 5 *supra.*

[33] *Id.* at p. 2. This explanation supersedes the previous explanation provided in Amendment No. 1. *See* Amendment No. 1, note 3 *supra.*

[34] *See* Amendment No. 2, p. 2, note 5 *supra.*

[35] *Id.*

[36] *Id.*

collusion or manipulation of a security if both participants were simultaneously logged-on and trading in the joint account. PCX Rule 6.40(b)(1), however, addresses this concern because it prevents a market maker who has a financial arrangement with another member from trading in the same trading crowd at the same time.

The Commission believes that PCX's removal of originally proposed rule language that held market makers accountable for their failure to follow established procedures was antithetical to its investor protection mandate. The Commission understands the Exchange's desire to address potential inequitable benefits and system disruptions that could occur if a market maker fails to follow procedure. However, removing existing language that could arguably serve as a deterrent to these violations was, in the Commission's view, inappropriate. Amendment No. 2 was responsive to this concern by retracting the proposed elimination of the cited language. The Exchange proposed an alternate provision that allows it to log a market maker off the system when a failure to follow the required log-off procedure occurs. This proposal strengthens the ability of PCX to enforce compliance with Auto-Ex procedures and, accordingly, the Commission finds good cause for accelerating approval of the proposed amendment.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the file number in the caption above and should be submitted by November 20, 1998.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–PCX–97–48), including Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29119 Filed 10–29–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3143]

State of Kansas (Amendment # 1)

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Douglas and Leavenworth Counties in the State of Kansas as a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 1 through October 8, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Atchison, Jefferson, Osage, and Shawnee in the State of Kansas. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 13, 1998 and for economic injury the termination date is July 14, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated October 23, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–29115 Filed 10–29–98; 8:45 am]

BILLING CODE 8025–01–P

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3139]

State of Mississippi (Amendment # 3)

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Jasper County, Mississippi as a disaster area due to damages caused by Hurricane Georges beginning on September 25, 1998 and continuing through October 5, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Lauderdale, Newton, and Scott in the State of Mississippi. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 30, 1998 and for economic injury the termination date is July 1, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 22, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–29114 Filed 10–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Index to Approved SBA Reporting and Record Keeping Requirements

This revision is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1995 as implemented by 5 CFR part 1320 that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement and, unless OMB determines it to be inappropriate, an expiration date. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number in the document. Because this a nonsubstantive revision dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C 551 et seq) requiring advance notice and comment.

Dated: October 23, 1998.

Thomas Dumaresq,

Assistant Administrator for Administration.

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245–0007	SBA 990, SBA 991, SBA 994, SBA 994B, SBA 994C, SBA 994F, SBA 994H.	13 CFR 115.1	06/30/00
3245–0009	SBA 480	13 CFR 121	09/30/99
3245–0015	SBA 1010A, B, C	13 CFR 124	04/30/01
3245–0016	SBA 4, SBA 4–I, SBA 4 Sch. A, SBA 4L, EIB–SBA–841–1, SBA 4 Short	13 CFR 120	10/31/98
3245–0018	SBA 5, SBA 739A, SBA 1368	13 CFR 123	04/30/01
3245–0024	SBA 1167, SBA 1395	13 CFR 125	12/31/98
3245–0062	SBA 415, SBA 415A	13 CFR 107	09/30/99
3245–0063	SBA 468	13 CFR 107.630	04/30/01
3245–0075	SBA 20	SBA SOP 6010.3	10/31/00
3245–0076	SBA 793	13 CFR 112	10/31/00
3245–0077	Reporting and Record Keeping Requirements on Non-Bank Lenders	13 CFR 120.471	03/31/00
3245–0078	SBA 1031	13 CFR 107.640	04/30/01
3245–0081	SBA 25–28, SBA 33–34, SBA 1022 SBA 1022A, SBA 1065, SBA 444–C	13 CFR 107.1100	04/30/99
3245–0083	SBA 415C	13 CFR 107	02/28/00
3245–0084	SBA 700	13 CFR 123.101	02/28/00
3245–0090	SBA 59	13 CFR 130	06/30/99
3245–0091	SBA 641, SBA 641A	SBA SOP 6010.3	06/30/01
3245–0096	SBA 883, SBA 1375	Presidential Proclamation Designating Small Business Week.	02/28/99
3245–0101	SBA 355	13 CFR 121	09/30/99
3245–0108	SBA 1062	13 CFR 130	08/31/00
3245–0109	SBA 857	13 CFR 107.620	01/31/00
3245–0110	SBA 1366, SBA 1391	13 CFR 123	09/30/99
3245–0116	SBA 860	13 CFR 107	01/31/00
3245–0118	SBA 856	13 CFR 107	09/30/98
3245–0121	Governor's Request for Disaster Declaration	13 CFR 123.3	01/31/00
3245–0123	SBA 888	SBA SOP 6010.3	09/30/99
3245–0124	SBA 898	SBA SOP 9054.4	09/30/98
3245–0131	SBA 172	SBA SOP 5050.4	09/30/98
3245–0132	SBA 1149	13 CFR 120	05/31/00
3245–0136	SBA 987	13 CFR 123	09/30/98
3245–0140	SBA 1222, SBA 1224	13 CFR 143.10	06/30/01
3245–0141	SBA 843A, SBA 843B	13 CFR 125.2	05/31/99
3245–0158	SBA 1183	SBA SOP 5050.4	09/30/99
3245–0169	SBDC program and financial reports	13 CFR 130	09/30/99
3245–0172	SBA 1405	13 CFR 107	09/30/99
3245–0178	SBA 912	13 CFR 120.191	07/31/00
3245–0183	SBA 1419	SBA SOP 6010.3	10/31/00
3245–0185	SBA 1086	13 CFR 120.613	08/31/00
3245–0188	SBA 413	13 CFR 120.191	03/31/00
3245–0189	Business Loan reconsideration request	13 CFR 120.193	03/31/00
3245–0191	Reporting and Recordkeeping for lenders	13 CFR 120.471	03/31/00
3245–0200	SBA 1050	Small business act section 7	06/30/01
3245–0201	SBA 147, SBA 148, SBA 159, SBA 160, SBA 160A, SBA 529B, SBA 928, SBA 1059.	13 CFR 120.191	07/31/00
3245–0203	SBA 104A	13 CFR 125.5	03/31/00
3245–0225	SBA 1531	13 CFR 125.5	05/31/99
3245–0228	SBA 1540	Public Law 95–507	05/31/01
3245–0289	SBA 1843	Title 5 U.S.C.	07/31/99
3245–0301	SBA 1941A, SBA 1941B, SBA 1941C,	13 CFR 107	06/30/01
3245–0307	SBA 1972	13 CFR 115	09/30/99
3245–0308	SBA 1973	13 CFR 115	09/30/99
3245–0309	Evaluation of the 7(a) and 504 guaranteed loan program	CFR 120.200 and 120.800	12/31/98
3245–0312	SBA 1989	Public Law 103–337	03/31/00
3245–0313	SBA 1993	Public Law 104–201	06/30/00
3245–0314	Voluntary customer surveys in accordance with E.O	Public Law 102–564	09/30/00
3245–0315	8(a) electronic application follow-up survey	13 CFR 124	10/31/00
3245–0316	SBA 2031, SBA 2031A, SBA 2031B, SBA 2031C, SBA 2031D, SBA 2031E, SBA 2031F, SBA 2031G, SBA 2031H.	SBA SOP 9080	12/31/00
3245–0317	Application form for SDB program	13 CFR 124	11/30/98

[FR Doc. 98–29113 Filed 10–29–98; 8:45 am]
BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Testing Modifications to the Disability Determination Procedures; Disability Determination Services Full Process Model with Rationale Summary

AGENCY: Social Security Administration.

ACTION: Notice of the additional test sites and the duration of testing involving modifications to the disability determination procedures.

SUMMARY: The Social Security Administration (SSA) is announcing the locations of additional tests that it will conduct under the current rules codified at 20 CFR 404.906, 404.943, 404.966, 416.1406, 416.1443, and 416.1466. Those rules provide the authority to test modifications, either individually or in any combination, to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and claims for supplemental security income (SSI) payments based on disability under title XVI of the Act. This notice announces the test sites and duration of tests involving a combination of modifications to the disability process. The additional testing will focus on certain SSA requirements for preparing a rationale for the adjudicator's disability determination to see if the modifications have any effect on how these requirements are met.

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Disability Models Team Leader, Office of Disability, Disability Process Redesign Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–965–9203.

SUPPLEMENTARY INFORMATION: In April, 1997, SSA began testing several modifications to its disability determination procedures. These modifications have been described in a **Federal Register** notice published on April 4, 1997 (62 FR 16210) and final rules published on September 23, 1997 (62 FR 49598). Those modifications were: the use of a single decisionmaker who may make the disability determination without requiring the signature of a medical consultant; the conducting of a predecision interview in which a claimant, for whom SSA does not have sufficient information to make a fully favorable determination or for whom the evidence would require an initial determination denying the claim, can present additional information to the decisionmaker before an initial determination is made; the elimination of the reconsideration step in the administrative review process; the use of an adjudication officer who will conduct prehearing procedures and, if appropriate, will issue a decision wholly favorable to the claimant; and the elimination of the Appeals Council step in the administrative appeals process.

Selection of cases for these tests in eleven state sites began in April 1997 and ended in January 1998. Adjudication of cases following the modified process continues.

We are now announcing the beginning of additional testing of a process that incorporates the above modifications, with the exception of the elimination of the Appeals Council step in the administrative appeals process. This testing will focus on certain requirements, as set out in SSA's rules and regulations, for preparing a rationale for the adjudicator's disability determination to see if the integrated model procedures have any effect on how these requirements are met. Some sites will test all of the modifications as described above, except the elimination of the Appeals Council review step; in other sites, only certain of the modifications will be tested. The test will take place at the following locations:

- Disability Determination Service Administration, Arizona Department of Economic Security, Suite 105, 3655 East Second Street, Tucson, AZ 85716;
- Disability Adjudication Section, Division of Rehabilitation, Clark Harrison Building, 330 West Ponce de Leon Avenue, Decatur, GA 30030;
- Disability Determination Service, Department of Vocational Rehabilitation, Central Avenue, Building 1313, Tiyan, Guam 96913
- Social Security Disability Determinations Services, Minnesota Department of Economic Security, Suite 300 Metro Square Building, 121 East Seventh Place, St. Paul, MN 55101;
- Section of Disability Determinations, Missouri Department of Vocational Rehabilitation, 2530 I South Campbell Street, Springfield, MO 65807;
- Office of Disability Determinations, New York State Department of Social Services, 99 Washington Avenue, Room 1239, Albany, NY 12260; and
- Disability Determination Services, Vocational Rehabilitation Division, Ground Floor, 500 Summer Street, NE, Salem, OR 97310.

Selection of cases for testing will begin on or about October 29, 1998, and is expected not to continue beyond December 31, 1999. If the Agency decides to continue case selection beyond this date, another notice will be published in the **Federal Register** to inform the public regarding continuation of the test.

Dated: October 6, 1998.

Susan M. Daniels, Ph.D.,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 98–29261 Filed 10–29–98; 8:45 am]
BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Social Security Acquiescence Ruling

98-5(8)

State of Minnesota v. Apfel; Coverage for Employees Under a Federal-State Section 218 Agreement or Modification and Application of the Student Services Exclusion From Coverage to Services Performed by Medical Residents—Title II of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-5(8).

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision, as explained in this Social Security Acquiescence Ruling, at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after October 30, 1998. If we made a determination or decision between July 6, 1998, the date of the Court of Appeals' decision, and October 30, 1998 the effective date of

this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.003 - Special Benefits for Persons Aged 72 and Over; 96.004 Social Security -Survivors Insurance.)

Dated: October 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-5(8)

State of Minnesota v. *Apfel,* 151 F.3d 742 (8th Cir. 1998)—Coverage for Employees Under a Federal-State Section 218 Agreement or Modification and Application of the Student Services Exclusion From Coverage to Services Performed by Medical Residents—Title II of the Social Security Act.

Issue: Whether, in determining coverage of services performed by State and local government employees under the provisions of a Federal-State agreement or modification under section 218 of the Social Security Act (the Act), the Social Security Administration (SSA) must consider the original intent and understanding of the parties to the agreement as controlling unless the agreement and modification is altered or amended by statutory law. Whether the student services exclusion from Social Security coverage under section 210(a)(10) of the Act can apply to services performed by medical students and whether, in applying the exclusion, SSA must make a case by case examination of the medical residents' relationship with the employer school, college or university.

Statute/Regulation/Ruling Citation: Sections 210(a)(10) and 218 of the Social Security Act (42 U.S.C. 410 (a) (10) and 418), 20 CFR 404.1028(c), 404.1209, 404.1210, 404.1214, 404.1215. 404.1216, Social Security Ruling 78-3.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

State of Minnesota v. *Apfel,* 151 F.3d 742 (8th Cir. 1998).

Applicability of Ruling: This Ruling applies to all determinations or decisions at all administrative levels (e.g., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case: In 1950, Congress enacted section 218 of the Act which allows States to enter into agreements with SSA (section 218 agreements) to obtain Social Security coverage for State and local government employees. In accordance with the provisions of section 218, a State designates coverage groups for Social Security coverage by choosing to cover nonretirement system groups of employees of the State or political subdivision of the State or retirement system groups, or both. Under section 218(c)(6), certain services are required to be mandatorily excluded from coverage. In addition, there are specific, limited optional exclusions under section 218(c) that the State may elect to take to exclude certain services from coverage.

In 1955, the State of Minnesota and SSA executed a section 218 agreement for Social Security coverage. The agreement initially applied to a few coverage groups but the State subsequently executed a modification in 1958 to extend coverage to services performed by individuals as employees of the University of Minnesota. The modification excluded ''any service performed by a student'' pursuant to the optional exclusion provided by section 218(c)(5) of the Act. The University did not withhold Social Security contributions from the annual stipends paid to medical residents at its teaching hospital. It also did not pay the employer's share of the contributions. This practice continued for more than 30 years.

On September 13, 1990, SSA issued a formal notice of assessment holding the State liable for unpaid contributions totaling nearly $8 million based on stipends paid to medical residents during 1985 and 1986.[1] The State requested administrative review and on January 11, 1994, SSA's Deputy Commissioner for Programs affirmed the assessment. The State of Minnesota then sought judicial review. The district court granted the State's motion for summary judgment and overturned the assessment. The district court held that:

(1) the medical residents were not ''employees'' of the University within the meaning of the 1958 modification; and

(2) even if they were employees, they were excluded from coverage based upon the modification's student exclusion. SSA appealed this decision to the United States Court of Appeals for the Eighth Circuit.

The United States Court of Appeals for the Eighth Circuit affirmed the district court's alternative holdings and further stated that the regulatory approach set forth in 20 CFR 404.1028(c) prevents SSA from summarily concluding that medical residents never qualify for the student services exclusion without a case by case examination of the nature of the medical residents' relationship with their employer.

Holding: After considering the Supreme Court's decision in *Bowen* v. *Public Agencies Opposed to Social Security Entrapment,* 477 U.S. 41 (1986), the Eighth Circuit found that the Federal-State section 218 agreement for coverage and the 1958 modification were ''contractual arrangement[s].'' Accordingly, the court quoted from the district court's decision and held that ''the meaning of section [2]18 agreements cannot be altered 'through ruling by the the [sic] SSA or through subsequent case law developments regarding the employment status of medical residents.''' The court also held that ''[t]he power to alter the terms of section [2]18 agreements lies exclusively with Congress'' and that because Congress did not change ''the meaning of the State's 1958 modification, the parties' [original] intent is controlling.'' The court agreed with the district court that medical residents were not employees of the University under the terms of the 1958 modification and therefore were not covered for Social Security purposes by that modification.

The Eighth Circuit also held that the general student services exclusion in section 210(a)(10) of the Act applied to medical residents participating in the University's medical residency program because ''[t]he bright-line rule of SSR 78-3 is inconsistent with the approach set forth at 20 C.F.R. § 404.1028(c), which contemplates a case-by-case examination to determine if an individual's relationship with a school is primarily for educational purposes or primarily to earn a living.''

The circuit court focused on the nature of the medical residents' relationship with the University, and

[1] Under the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, the Internal Revenue Service determines liability for Social Security taxes pursuant to a section 218 Federal-State agreement for coverage and its modifications for wages paid after December 31, 1986.

observed the undisputed facts that the medical residents were enrolled in the University, paid tuition and were registered for approximately 15 credit hours per semester. The court concluded that the primary purpose for the residents' participation in the program was to pursue a course of study rather than to earn a living.

Statement as to How State of Minnesota Differs From SSA Rules

A section 218 agreement establishes Social Security coverage for State and local government employees, and the terms of the section 218 agreement between SSA and the State are governed by the provisions of section 218 of the Act. Under SSA's regulations implementing section 218 (20 CFR 404.1214 and 404.1215), the written agreement and subsequent modifications to that agreement establish the continuing relationship between SSA and the State. SSA's regulations (20 CFR 404.1215) provide that a State may modify in writing its section 218 agreement to include additional coverage groups consistent with the provisions of section 218. Generally, SSA does not consider the original intent of the parties to the section 218 agreement and its modifications, by itself, to be controlling. The error modification procedure at 20 CFR 404.1216, however, provides that a section 218 agreement or modification may be modified to correct an error upon submittal of evidence establishing that an error actually occurred. Under this procedure, SSA may consider evidence such as minutes of meetings or statements by appropriate officials to establish the intent of the parties at the time Social Security coverage was requested, and SSA also considers whether the State's wage reporting practices were consistent with its intent.[2]

In construing a modification which was ambiguous as to whether medical residents were considered to be employees for purposes of that modification, the Eighth Circuit concluded that the original intent and understanding of the parties executing the section 218 agreement for coverage and its subsequent modifications is controlling for establishing coverage for State and local employees unless the original intent or understanding was contrary to the provisions of section 218, or unless the agreement is altered or amended by statutory law.

[2] State and Local Coverage Handbook for the Social Security Administration and State Social Security Administrators, section 530.

Section 210(a)(10) of the Act provides for a general exclusion from Social Security coverage for services performed for a school, college or university by a student who is enrolled and regularly attending classes there. Section 218(c)(5) provides States with the option of excluding such services by students. If the exclusion is not taken, services performed by students are covered even though they would be excluded pursuant to section 210(a)(10) if performed for a private school, college or university. Under SSA's regulations implementing section 210 (20 CFR 404.1028(c)), the determination of whether an individual is a student depends on the relationship with his or her employer and whether the focus of that relationship is pursuing a livelihood or pursuing a course of study. SSR 78-3 provides that resident physicians are not ''students'' for purposes of the student services exclusion under section 210(a)(10) of the Act. Under SSA rules, the services performed by medical residents do not qualify for the student exclusion.

The Eighth Circuit concluded that SSR 78-3 is inconsistent with SSA's student services exclusion regulation (20 CFR 404.1028) which requires a case by case examination to determine if an individual's relationship with the employer meets the requirements for that exclusion to apply.

Explanation of How SSA Will Apply The State of Minnesota Decision Within The Circuit

This Ruling applies to Federal-State agreements for coverage and subsequent modifications under section 218 of the Act involving Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota. It also applies to services performed by medical residents for a school, college or university located in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota.

In establishing coverage for State and local employees under an ambiguous provision of a section 218 agreement or a modification to that agreement, unless the original intent or understanding of the parties was contrary to the provisions of section 218, SSA must consider that intent and understanding controlling unless the agreement and modification is altered or amended by law. SSA may consider the terms of the agreement or modification in determining the intent and understanding of the parties.

In applying the student services exclusion from Social Security coverage under section 210(a)(10) of the Act and under 20 CFR 404.1028(c), SSA must consider whether medical residents who are paid stipends qualify for the exclusion. When applying the student services exclusion to medical residents, SSA must make a case by case examination of the relationship of the residents with the employer school, college or university to determine whether the residents meet the statutory criteria of being enrolled and regularly attending classes and whether they meet the regulatory criteria. In evaluating the relationship, SSA will consider all relevant facts and circumstances.

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SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; 1999 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration.
ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 1.3 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 1998;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 1999 to $500 for an eligible individual, $751 for an eligible individual with an eligible spouse, and $250 for an essential person;

(3) The national average wage index for 1997 to be $27,426.00;

(4) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $72,600 for remuneration paid in 1999 and self-employment income earned in taxable years beginning in 1999;

(5) For beneficiaries under age 65, the monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1999 to be $800;

(6) The dollar amounts (''bend points'') used in the benefit formula for workers who become eligible for benefits in 1999 to be $505 and $3,043;

(7) The dollar amounts (''bend points'') used in the formula for computing maximum family benefits for workers who become eligible for benefits in 1999 to be $645, $931, and $1,214;

(8) The amount of earnings a person must have to be credited with a quarter of coverage in 1999 to be $740;

(9) The ''old-law'' contribution and benefit base to be $53,700 for 1999;

(10) The monthly amount of substantial gainful activity applicable to

statutorily blind individuals in 1999 to be $1,110;

(11) The domestic worker coverage threshold to be $1,100 for 1999; and

(12) The OASDI fund ratio to be 171.2 percent for 1998.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. For information on eligibility or claiming benefits, call 1–800–772–1213. A summary of the information in this announcement is available in a recorded message by telephoning (410) 965–3053. Information relating to this announcement is also available on the Internet. The address is http://www.ssa.gov/OACT/COLA/Intro.html.

SUPPLEMENTARY INFORMATION: The Commissioner is required by the Act to publish within 45 days after the close of the third calendar quarter of 1998 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, the Commissioner is required to publish on or before November 1 the national average wage index for 1997 (section 215(a)(1)(D)), the OASDI fund ratio for 1998 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 1999 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1999 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1999 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1999 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1999 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 1.3 percent for benefits under titles II and XVI of the Act.

Under title II, OASDI benefits will increase by 1.3 percent beginning with December 1998 benefits. (All benefits for a given month are normally payable in the following month. However, those benefits for December 1998 that are normally paid on the third of the following month will be paid on December 31, 1998, because January 3, 1999, is a Sunday.) This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 1.3 percent effective for payments made for the month of January 1999 but paid on December 31, 1998. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1998 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective with December 1998, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1998, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1997 through the third quarter of 1998.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The arithmetic mean is rounded, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1997, is: for July 1997, 157.5; for August 1997, 157.8; and for September 1997, 158.3. The arithmetic mean for this calendar quarter is 157.9. The corresponding Consumer Price Index for each month in the quarter ending September 30, 1998, is: for July 1998, 159.8; for August 1998, 160.0; and for September 1998, 160.2. The arithmetic mean for this calendar quarter is 160.0. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1998, exceeds that for the calendar quarter ending September 30, 1997 by 1.3 percent, a cost-of-living benefit increase of 1.3 percent is effective for benefits under title II of the Act beginning December 1998.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1999, benefits will increase by 1.3 percent beginning with benefits for December 1998 which are payable in January 1999. In the case of first eligibility after 1998, the 1.3 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235. The table is also available on the Internet at address http://www.ssa.gov/OACT/ProgData/tableForm.html.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as ''special minimum'' benefits and are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 ''years of coverage.'' To earn a year of coverage for purposes of the special minimum, a person must earn at least a certain proportion (25 percent for years before 1991, and 15 percent for years after 1990) of the ''old-law'' contribution and benefit base. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 1.3 percent benefit increase.

Special Minimum Primary Insurance Amounts and Maximum Family Benefits Payable for Dec. 1998

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$27.90	$42.20
12	56.10	84.80
13	84.70	127.40
14	112.80	169.80
15	141.20	212.00

Number of years of coverage	Primary insurance amount	Maximum family benefit
16	169.60	255.00
17	198.00	297.70
18	226.40	340.10
19	254.70	382.70
20	283.00	425.10
21	311.70	468.00
22	339.80	510.40
23	368.40	553.60
24	396.80	595.90
25	425.10	638.00
26	453.80	681.40
27	482.00	723.70
28	510.30	766.10
29	538.60	808.80
30	567.00	851.10

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $203.10 for an individual under sections 227 and 228 of the Act is increased by 1.3 percent to obtain the new amount of $205.70. The current monthly benefit amount of $101.50 for a spouse under section 227 is increased by 1.3 percent to $102.80.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 1.3 percent effective January 1999. For 1998, the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$494, $741, and $247, respectively—were derived from corresponding yearly unrounded Federal SSI benefit amounts of $5,932.89, $8,898.33, and $2,973.24. For 1999, these yearly unrounded amounts are increased by 1.3 percent to $6,010.02, $9,014.01, and $3,011.89, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 1999, are $6,000, $9,012, and $3,000. The corresponding monthly amounts for 1999 are determined by dividing the yearly amounts by 12, giving $500, $751, and $250, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Fee for Services Performed as a Representative Payee. Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of (1) 10 percent of the monthly benefit involved, or (2) $27 per month ($52 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Due to the rounding provision, the current $27 amount remains the same for 1999, while the current $52 amount is increased by 1.3 percent to $53 for 1999.

National Average Wage Index for 1997

General. Under various provisions of the Act, several amounts are scheduled to increase automatically for 1999 based on the annual increase in the national average wage index. The amounts are (1) the OASDI contribution and benefit base, (2) the retirement test exempt amount for beneficiaries under age 65, (3) the dollar amounts, or ''bend points,'' in the primary insurance amount and maximum family benefit formulas, (4) the amount of earnings required for a worker to be credited with a quarter of coverage, (5) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), and (6) the substantial gainful activity amount applicable to statutorily blind individuals. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

Computation. The determination of the national average wage index for calendar year 1997 is based on the 1996 national average wage index of $25,913.90 announced in the **Federal Register** on October 30, 1997 (62 FR 58762), along with the percentage increase in average wages from 1996 to 1997 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $24,859.17 and $26,309.73 for 1996 and 1997, respectively. To determine the national average wage index for 1997 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), the 1996 national average wage index of $25,913.90 is multiplied by the percentage increase in average wages from 1996 to 1997 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Amount. The national average wage index for 1997 is $25,913.90 times $26,309.73 divided by $24,859.17, which equals $27,426.00. Therefore, the national average wage index for calendar year 1997 is determined to be $27,426.00.

OASDI Contribution and Benefit Base

General. The OASDI contribution and benefit base is $72,600 for remuneration paid in 1999 and self-employment income earned in taxable years beginning in 1999.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are

paid. The OASDI tax rate for remuneration paid in 1999 is set by statute at 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 1999 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 1999, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 1999, at the rate of 2.9 percent.)

(b) It is the maximum annual amount used in determining a person's OASDI benefits.

Computation. Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 1999 shall be equal to the larger of (1) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 1997 to that for 1992, or (2) the current base ($68,400). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount. The ratio of the national average wage index for 1997, $27,426.00 as determined above, compared to that for 1992, $22,935.42, is 1.1957924. Multiplying the 1994 OASDI contribution and benefit base amount of $60,600 by the ratio of 1.1957924 produces the amount of $72,465.02 which must then be rounded to $72,600. Because $72,600 exceeds the current base amount of $68,400, the OASDI contribution and benefit base is determined to be $72,600 for 1999.

Retirement Earnings Test Exempt Amounts

General. Social Security benefits are withheld when a beneficiary under age 70 has earnings in excess of the retirement earnings test exempt amount. Since 1978, higher exempt amounts have applied to beneficiaries aged 65 through 69 compared to those under age 65. Formulas for determining the monthly exempt amounts are provided in section 203(f)(8)(B) of the Act, as amended by section 102 of the ''Senior Citizens' Right to Work Act of 1996,'' title I of Pub. L. 104–121. This amendment set the annual exempt amount for beneficiaries aged 65 through 69 to $12,500 for 1996, $13,500 for 1997, $14,500 for 1998, $15,500 for 1999, $17,000 for 2000, $25,000 for 2001, and $30,000 for 2002. The corresponding monthly exempt amounts are exactly one-twelfth of the annual amounts. After 2002, the monthly exempt amount for this group of beneficiaries will increase under the applicable formula.

For beneficiaries aged 65 through 69, $1 in benefits is withheld for every $3 of earnings in excess of the annual exempt amount. For beneficiaries under age 65, $1 in benefits is withheld for every $2 of earnings in excess of the annual exempt amount.

Computation. Under the formula applicable to beneficiaries under age 65, the monthly exempt amount for 1999 shall be the larger of (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 1997 to that for 1992, or (2) the 1998 monthly exempt amount ($760). If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Exempt Amount for Beneficiaries Under Age 65. The ratio of the national average wage index for 1997, $27,426.00, compared to that for 1992, $22,935.42, is 1.1957924. Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio 1.1957924 produces the amount of $801.18. This must then be rounded to $800. Because $800 is larger than the corresponding current exempt amount of $760, the retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $800 for 1999. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $9,600.

Computing Benefits After 1978

General. The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. The computation formula is adjusted automatically each year to reflect changes in general wage levels, as measured by the national average wage index.

A worker's earnings are adjusted, or ''indexed,'' to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime. A certain number of years of earnings are needed to compute the average indexed monthly earnings. After the number of years is determined, those years with the highest indexed earnings are chosen, the indexed earnings are summed, and the total amount is divided by the total number of months in those years. The resulting average amount is then rounded down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 1999, the national average wage index for 1997, $27,426.00, is divided by the national average wage index for each year prior to 1997 in which the worker had earnings. The actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, is multiplied by the corresponding ratio to obtain the worker's indexed earnings for each year before 1997. Any earnings in 1997 or later are considered at face value, without indexing. The average indexed monthly earnings is then computed and used to determine the worker's primary insurance amount for 1999.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1999 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1997, $27,426.00, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1999, the ratio is 2.8044551. Multiplying the 1979 amounts of $180 and $1,085 by 2.8044551 produces the amounts of $504.80 and $3,042.83. These must then be rounded to $505 and $3,043. Accordingly, the portions of the average indexed monthly earnings to be used in 1999 are determined to be the first $505, the amount between $505 and $3,043, and the amount over $3,043.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1999, or who die in 1999 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $505 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $505 and through $3,043, plus

(c) 15 percent of their average indexed monthly earnings over $3,043.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General. The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the ''bend points'' of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 1999 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the national average wage index for 1997, $27,426.00, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1999, the ratio is 2.8044551. Multiplying the amounts of $230, $332, and $433 by 2.8044551 produces the amounts of $645.02, $931.08, and $1,214.33. These amounts are then rounded to $645, $931, and $1,214. Accordingly, the portions of the primary insurance amounts to be used in 1999 are determined to be the first $645, the amount between $645 and $931, the amount between $931 and $1,214, and the amount over $1,214.

Consequently, for the family of a worker who becomes age 62 or dies in 1999 before age 62, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $645 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $645 through $931, plus

(c) 134 percent of the worker's primary insurance amount over $931 through $1,214, plus

(d) 175 percent of the worker's primary insurance amount over $1,214.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General. The 1999 amount of earnings required for a quarter of coverage is $740. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation. Under the prescribed formula, the quarter of coverage amount for 1999 shall be equal to the larger of (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 1997 to that for 1976, or (2) the current amount of $700. Section 213(d) further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount. The ratio of the national average wage index for 1997, $27,426.00, compared to that for 1976, $9,226.48, is 2.9725312. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.9725312 produces the amount of $743.13, which must then be rounded to $740. Because $740 exceeds the current amount of $700, the quarter of coverage amount is determined to be $740 for 1999.

''Old-Law'' Contribution and Benefit Base

General. The 1999 ''old-law'' contribution and benefit base is $53,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments, but with the revised indexing formula introduced by section 321(g) of the ''Social Security Independence and Program Improvements Act of 1994.'' Under the formula, the ''old-law'' contribution and benefit base shall be the larger of (1) the 1994 ''old-law'' base ($45,000) multiplied by the ratio of the national average wage index for 1997 to that for 1992, or (2) the current ''old-law'' base ($50,700). If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount. The ratio of the national average wage index for 1997, $27,426.00, compared to that for 1992, $22,935.42, is 1.1957924. Multiplying the 1994 ''old-law'' contribution and benefit base amount of $45,000 by the

ratio of 1.1957924 produces the amount of $53,810.66 which must then be rounded to $53,700. Because $53,700 exceeds the current amount of $50,700, the ''old-law'' contribution and benefit base is determined to be $53,700 for 1999.

Substantial Gainful Activity Amount for Blind Individuals

General. A finding of disability under titles II and XVI of the Act requires that a person be unable to engage in substantial gainful activity (SGA). Under current regulations, a person who is not statutorily blind and who is earning more than $500 a month (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals. This higher SGA amount increases in accordance with increases in the national average wage index.

Computation. The monthly SGA amount for statutorily blind individuals for 1999 shall be the larger of (1) such amount for 1994 multiplied by the ratio of the national average wage index for 1997 to that for 1992, or (2) such amount for 1998. If the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals. The ratio of the national average wage index for 1997, $27,426.00, compared to that for 1992, $22,935.42, is 1.1957924. Multiplying the 1994 monthly SGA amount for statutorily blind individuals of $930 by the ratio of 1.1957924 produces the amount of $1,112.09. This must then be rounded to $1,110. Because $1,110 is larger than the current amount of $1,050, the monthly SGA amount for statutorily blind individuals is determined to be $1,110 for 1999.

Domestic Employee Coverage Threshold

General. Section 2 of the ''Social Security Domestic Employment Reform Act of 1994'' (Pub. L. 103–387) increased the threshold for coverage of a domestic employee's wages paid per employer from $50 per calendar quarter to $1,000 in calendar year 1994. The statute holds the coverage threshold at the $1,000 level for 1995 and then increases the threshold in $100 increments for years after 1995. The formula for increasing the threshold is provided in section 3121(x) of the Internal Revenue Code.

Computation. Under the formula, the domestic employee coverage threshold amount for 1999 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 1997 to that for 1993. If the amount so determined is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount. The ratio of the national average wage index for 1997, $27,426.00, compared to that for 1993, $23,132.67, is 1.1855960. Multiplying the 1995 domestic employee coverage threshold amount of $1,000 by the ratio of 1.1855960 produces the amount of $1,185.60, which must then be rounded to $1,100. Accordingly, the domestic employee coverage threshold amount is determined to be $1,100 for 1999.

OASDI Fund Ratio

General. In addition to providing an annual automatic cost-of-living increase in OASDI benefits, section 215(i) of the Act also includes a ''stabilizer'' provision that can limit such benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in the national average wage index or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The law also provides for subsequent ''catch-up'' benefit increases for beneficiaries whose previous benefit increases were affected by this provision. ''Catch-up'' benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1998 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1998 to (2) the estimated expenditures of the OASI and DI Trust Funds during 1998, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1998 equaled $655,510 million, and the expenditures are estimated to be $382,871 million. Thus, the OASDI fund ratio for 1998 is 171.2 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1998. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential ''catch-up'' benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no ''catch-up'' benefit increase is required.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Social Security-Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income.)

Dated: October 21, 1998.

Kenneth S. Apfel,

Commissioner, Social Security Administration.

[FR Doc. 98–28988 Filed 10–29–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 26, 1998 (63 FR 28548–28549).

DATES: Comments must be submitted on or before November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, Office of Motor Carrier Information Analysis, (202) 358–7051, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration

Title: Financial Responsibility, Trucking and Freight Forwarding.

OMB Number: 2125–0570.

Type of Request: Extension of a currently approved collection.

Affected Public: Motor carriers, freight forwarders, and brokers.

Abstract: The Secretary of Transportation is authorized to register for-hire motor carriers of regulated

commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registrations to the FHWA. Registration remains valid only as long as the transportation entities maintain, on file with the FHWA, evidence of the required levels of insurance coverage pursuant to 49 U.S.C. 13906. Regulations governing financial responsibility requirements are found at 49 CFR part 387. Forms BMC–91, 91x and 82 provide evidence of the required coverage for bodily injury and property damage (BI&PD) liability. Forms BMC–34 and 83 establish compliance with cargo liability requirements. Forms BMC–84 and 85 are filed by brokers to comply with the requirement for a $10,000 surety bond or trust fund agreement. Forms BMC–35, 36, and 85 cancel prior filings. Forms BMC–90 and 32 are endorsements which must be attached to BI&PD and cargo insurance policies, respectively, but are not filed with the FHWA. Motor carriers can also apply to self-insure BI&PD and/or cargo liability in lieu of filing certificates of insurance or surety bonds with the FHWA. Form BMC–40 is the application used to apply for self-insurance authority.

Estimated Total Annual Burden: The estimated total annual burden is 200 hours for the BMC–40 based on 5 filings per year. The estimated total annual burden for all of the other forms is 30,000 hours based on 180,000 filings per year.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 26, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–29122 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection's described below was published on August 19, 1998 (63 FR 44503–44505). The ICR's are: 1. Claims Under The Oil Pollution Act of 1990; 2. Security Zones, Regulated Navigation Areas, and Safety Zones; 3. Advance Notice and Adequacy Certification for Reception Facilities; 4. Commercial Fishing Vessel Regulations; 5. Equivalent and Approved Equipment; 6. Marine Portable Tanks (MPT's); Alteration Non-specification Portable Tanks; Approval; 7. Plan Approval and Records For Vessels Carrying Oil in Bulk; 8. Application For A Permit To Transport Municipal or Commercial Waste; and 9. State Access To The Oil Spill Liability Trust Fund For Removal Costs Under The Oil Pollution Act of 1990.

DATES: Comments on this notice must be received on or before November 30, 1998.

FOR FURTHER INFORMATION CONTACT: For copies of these documents, contact Barbara Davis, Office of Information Management, 202–267–2326.

SUPPLEMENTARY INFORMATION:

U. S. Coast Guard

1. Title: Claims Under the Oil Pollution Act of 1990.

OMB Control Number: 2115–0596.

Type of Request: Extension of a currently approved collection.

Forms: N/A.

Affected Public: Claimants and responsible parties of oil spills.

Abstract: The information collected will be used to determine if claims submitted to the Oil Spill Liability Trust Fund are compensable and where compensable, ensure that the correct amount of reimbursement for damages are made from the Fund.

Need: Coast Guard will ensure that fair and reasonable payments are made to claimants and will protect the interest of the Federal Government. Claims that are submitted must be fully substantiated and the procedures for advertising and presentation of claims must be followed as directed by OPA 90 (33 U.S.C. 2713 and 2714).

Burden Estimate: The estimated burden is 10,163 hours annually.

2. Title: Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 2115–0076.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: States, Local Government Agencies, Vessels and facilities.

Abstract: The information for this report is only collected when a security zone, regulated navigation area or safety zone is requested. The information collected will be used to assess the need to establish a security zone, safety zone or regulated navigation area.

Need: 33 CFR, parts 6 and 165 gives the Coast Guard Captain of the Port (COTP), the authority to designate security zones in the U.S. for a period of time he deems necessary to prevent damage or injury. 33 U.S.C. 1223 authorized the Coast Guard to prescribe regulations to control vessel traffic in areas which are determined to be hazardous due to conditions of reduced visibility, adverse weather or vessel congestion. 33 U.S.C. 1225 authorized the Coast Guard to establish regulations to allow the designation of safety zones

where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

Burden: The estimated burden is 394 hours annually.

3. Title: Advance Notice and Adequacy Certification for Reception Facilities.

OMB Control Number: 2115–0543. (2115–0554 Advance Notice of Need for Reception Facilities, is combined into this collection).

Type Request: Extension of a currently approved collection.

Form(s): CG–5401, CG–5401A, CG–5401B, and CG–5401C.

Affected Public: Reception Facility Owners and Operators of Ports and Terminals.

Abstract: Persons in charge of ports and terminals will submit information necessary for the Coast Guard to determine whether their reception facility is adequate. Ships in need of a reception facility will be required to give a 24 hour notice.

Need: 33 U.S.C. 1905 gives Coast Guard the authority to certify the adequacy of reception facilities at ports and terminals. Reception facilities are needed to receive wastes which ships may not discharge at sea. Under these regulations, there are discharge limitations for oil and oily wastes, noxious liquid substances, plastics and other garbage.

Burden: The burden estimate is 175.5 hours annually.

4. Title: Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 2115–0582.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Underwriters of Insurance Co., Owners, Agents and Individuals-in-charge of commercial fishing vessels.

Abstract: The reporting requirements for this information collection are intended to improve safety on board commercial fishing industry vessels. The requirements apply to all commercial fishing vessels and seamen on such vessels. The information collections require: (a) The posting of a placard to inform individuals on board of their duties, (b) that new fish processing vessels meet all classification and survey requirements of the American Bureau of Shipping, (c) that stability information for each vessel in detail be submitted, (d) marking of lifesaving equipment, (e) that letters of acceptance for instructors and the course curriculum being proposed to ensure that the instructors and the course being taught meet minimum standards and (f) that letters approving exemptions are being proposed to ensure that the master and individual in charge knew that the vessel is exempted from particular regulations.

Need: Under the authority of 46 U.S.C. 6104, the U.S. Coast Guard has developed regulations in which to reduce the unacceptably high level of fatalities and accidents in the commercial fishing industry. The regulations will also act as means of verifying compliance and to enhance safe operation of fishing vessels.

Burden Estimate: The estimated burden is 79,670 hours annually.

5. Title: 33 CFR 140.15 Equivalents and Approved Equipment.

OMB Control Number: 2115–0553.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Owner and/or operators of Outer Continental Shelf (OCS) facilities.

Abstract: This collection of information is necessary to implement the Best Available and Safest Technology concept of Section 21 of the Outer Continental Shelf (OCS) Act.

Need: The information is used by the Coast Guard for comparison with existing standards or procedures to ensure that at least an equivalent level of safety is maintained as provided for in the regulations.

Burden Estimate: The estimated hour burden is 100 hours annually.

6. Title: Marine Portable Tanks (MPT's): Alteration Non-Specification Portable Tanks; Approval.

OMB Control Number: 2115–0585.

Type request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Respondents: Owners of MPT's.

Abstract: The information collected under 46 CFR subpart 98.33–1 specifies that the Commandant of the Coast Guard may approve the design of portable tanks for the transport of certain Grade E combustible liquids and other low hazard materials when the tanks do not meet a DOT design standard.

Need: Approval of the Coast Guard for alterations to MPT's ensures that the altered tank retains the level of safety to which it was originally designed. In addition, rules that allow the approval of non-specification portable tanks assure that innovation and new designs are not frustrated by the regulation.

Burden Estimate: The estimated burden is 53 hours annually.

7. Title: Plan Approval and Records For Vessels Carrying Oil In Bulk.

OMB Control Number: 2115–0503 (2115–0520—Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk and 2115–0106—Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk, are combined into this collection.)

Type Request: Revision of a currently approved collection.

Form(s): N/A.

Affected Public: Owners and operators of vessels carrying oil in bulk.

Abstract: Title 46 U.S.C. 3703 provides the Coast Guard with general authority to regulate the design, construction, alteration, repair, maintenance, operation and equipping of vessels carrying oil in bulk.

Need: The purpose of the collection is to provide sufficient information to the Coast Guard to determine that a vessel complies with the minimum mandated standards as promulgated by regulations.

Burden Estimate: The estimated burden is 315 hours annually.

8. Title: Application For A Permit To Transport Municipal or Commercial Waste.

OMB Control Number: 2115–0579.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Owners or Operators of Municipal and Commercial Vessels transporting waste.

Abstract: The information collected under this report provides the basis for issuing or denying a permit for the transportation of municipal or commercial waste in the coastal waters of the United States.

Need: In accordance with 33 U.S.C. 2601, the U.S. Coast Guard issued regulations requiring owners or operations of vessels to apply for a permit to transport municipal or commercial waste in the United States and to display an identification number or other markings on their vessels.

Burden Estimate: The estimated burden is 376 hours annually.

9. Title: State Access To The Oil Spill Liability Trust Fund For Removal Costs Under The Oil Pollution Act of 1990.

OMB Control Number: 2115–0597.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: State Governments.

Abstract: The information provided by the State to the Coast Guard National Pollution Funds Center will be used to determine whether expenditures submitted by the state to the Fund are compensable and, where compensable, ensure that the correct amount of funding is made from the Fund.

Need: Under the authority of 33 U.S.C. 2712, Coast Guard has promulgated regulations detailing the manner in which to obligate the Oil Spill Liability Trust Fund (or the Fund). In order to ensure fair and reasonable payments to States and to protect the interests of the Federal Government, all expenditures submitted by a state must be fully substantiated and the procedures for presentation of those expenditures to the Fund must be followed.

Burden: The estimated burden in 3 hours annually.

Addresses: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: USCG Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 16, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–29123 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Indianapolis International Airport, Indianapolis, Indiana

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Indianapolis Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On April 15, 1998, the FAA determined that the noise exposure maps submitted by the Indianapolis Airport Authority under part 150 were in compliance with applicable requirements. On October 9, 1998, the Associate Administrator for Airports approved the Indianapolis International Airport noise compatibility program. Thirty-eight of forty-eight of the recommendations of the program were wholly or partially approved, two were withdrawn, three were disapproved for purposes of part 150, and five recommendations required no FAA action.

EFFECTIVE DATE: The effective date of the FAA's approval of the Indianapolis International Airport noise compatibility program is October 9, 1998.

INFORMATION CONTACT: Prescott C. Snyder, Airport Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number (847) 294–7538/FAX Number (847) 294–7046. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Indianapolis International Airport, effective October 9, 1998.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

Indianapolis Airport Authority submitted to the FAA on February 18, 1998, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1996 through February 1998.

The Indianapolis International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 15, 1998. Notice of this determination was published in the **Federal Register** on April 23, 1998.

The Indianapolis International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 15, 1998 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained forty-eight proposed measures for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective October 9, 1998.

Outright or partial approval was granted to thirty-eight of forty-eight specific program measures. Seventeen of nineteen of the noise abatement measures (including four submeasures under NA–4), seventeen of twenty-five land use measures and all four of the program management measures where wholly or partially approved.

The other ten measures not approved consisted of two land use measures that were withdrawn by the Airport Authority, three land use measures that were disapproved by FAA for purposes of part 150, and five measures that required no FAA action. Three of the five measures requiring no FAA action were land use measures already completed. The other two were noise abatement measures incorporating flight procedures, which were deferred pending additional FAA review before approval or disapproval. This deferral of flight procedures is allowed under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator of Airports on October 9, 1998. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Indianapolis Airport Authority.

Issued in Des Plaines, Illinois on October 22, 1998.

Pene' A Beversdorf,

Acting Manager, Chicago Airports District Office FAA, Great Lakes Region,

[FR Doc. 98–29127 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held November 17–20, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Tuesday, November 17:

(1) Plenary Convenes at 9:00 a.m. for 30 minutes:

(2) Introductory Remarks; (3) Review and Approval of the Agenda;

(4) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS, Continue Work on VDL Mode 3. Wednesday, November 18: (a.m.)

(5) WG–2 Continues; (p.m.) (6) WG–3, Review of VHF Digital Radio MOPS Document Progress and Furtherance of Work. Thursday, November 19: (a.m.) (7) Plenary Reconvenes at 9:00 a.m.:

(8) Review Summary Minutes of Previous Plenary of SC–172;

(9) Report on Operational Scenarios Sub-group Meeting;

(10) Reports from WG's 2 & 3 Activities; (11) Report on AMCP WG's and VDL Activities; (12) EUROCAE WG–47 Report and Discussion of Schedule for Further Work with WG–3; (13) Review Issues List and Address Future Work; (14) Other Business; (15) Dates and Places of Next Meetings; (16) WG's Continue as Necessary. Friday, November 20: (17) WG's Continue as Necessary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 26, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–29126 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use a Passenger Facility Charge (PFC) at Grant County International Airport, Moses Lake, Washington; Correction

SUMMARY: This correction incorporates information from the public agency's application.

In notice document 98–27250 beginning on page 54516 in the issue of Friday, October 9, 1998, make the following correction:

In the first column: Proposed charge expiration date: April 1, 2009.

Issued in Renton, Washington, on October 23, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–29124 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–03–U–00–RIW) to Use the Revenue From a Passenger Facility Charge (PFC) at Riverton Regional Airport, Submitted by the City of Riverton, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Riverton Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 30, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan Wiechmann, Manager; Denver Airports District Office; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Vern Heisler, City Engineer/Airport Manager, at the following address; 816 N. Federal, Riverton, Wyoming 82501.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Riverton Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258, 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 98–03–U–00–RIW to use PFC revenue at Riverton Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 23, 1998, the FAA determined that the application to use the revenue from a PFC submitted by Riverton Regional Airport, Riverton, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 14, 1999.

The following is a brief overview of the application.

Level of approved PFC: $3.00.

Actual charge effective date: October 1, 1995.

Proposed charge expiration date: March 1, 2007.

Total requested for use approval: $515,955.

Brief description of proposed project: Construct new terminal building

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at; Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Riverton Regional Project.

Issued in Renton, Washington on October 23, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–29125 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: [MARAD–98–4650]

Marine Transport Corp.; Application for Written Permission Under Section 608 and Section 805(a) of the Merchant Marine Act, 1936, as Amended

Marine Transport Corporation, by letter dated September 28, 1998, requests consideration and approval of the following transactions described herein.

The ITB JULIUS HAMMER and ITB FRANCIS HAMMER (Vessels) are currently subject to a leveraged lease financing with General Electric Credit Corporation of Georgia (GECC) (as owner participant) and Fleet National Bank, N.A. (as trustee) and bareboat chartered to subsidiaries of Occidental Chemical Corporation (Occidental Chemical). Debt required for the construction and acquisition of the Vessels is subject to Title XI loan guarantees (the Title XI Obligation). The ITB JULIUS HAMMER is subbareboat chartered to Ocean Chemical Transport, Inc. (Ocean Chemical Transport) which is the operator under Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–440 and the ITB FRANCIS HAMMER is subbareboat chartered to Ocean Chemical Carriers, Inc. (Ocean Chemical Carriers) which is the operator under ODSA, Contract MA/MSB–442. The Vessels are time chartered to a subsidiary of Occidental Chemical, Suwannee River Chartering, Inc., and were constructed with Construction-Differential Subsidy (CDS).

Occidental Chemical, Marine Transport Corporation (MTC), and Stolt-Nielsen, S.A. (Stolt Nielsen) have entered into a Memorandum of Agreement (MOA) to (1) transfer the interest of GECC in the trust that holds legal title to the Vessels to MTC subsidiaries to be formed (the MTC Subsidiaries) and (2) assign the ODSAs from Ocean Chemical Transport and Ocean Chemical Carriers to one or two subsidiaries of Intrepid Ship Management, Inc. (the Intrepid Subs) as the new subbareboat charterers of the Vessels.[1] Intrepid Ship Management, Inc., a subsidiary of MTC, was formerly named OMI Ship Management, Inc. In carrying out its obligations as the operator under the ODSAs, each Intrepid Sub may contract for specific management and technical services with MTC or subsidiaries of MTC.

As part of these transactions, the bareboat charters, the Title XI Reserve Fund and Financial Agreement, and the Depository Agreement would be assigned to and assumed by the appropriate MTC Subsidiaries and the current bareboat charterer would be released therefrom. The Vessels would continue to be operated in the international trade for the duration of their ODSAs.

Concurrently with the transfer of the interest in the trust that holds legal title to the Vessels, the ODSAs would be assigned to and assumed by the appropriate Intrepid Sub and Ocean Chemical Transport and Ocean Chemical Carriers would be released therefrom.

Concurrently with the transfer of GECC's interest in the trust that holds legal title to the Vessels and the assignment of the ODSAs, the Vessels would be time chartered to a joint venture to be formed by MTC and Stolt Nielsen. The Joint venture, a foreign corporation to be 75 percent owned by MTC and 25 percent owned by Stolt Nielsen, would be called Stolt Marine Transport (SMT). SMT would, in turn, sub-time charter the Vessels to Stolt Product Tankers, Inc. The sub-time charterer would employ the Vessels in accordance with the prevailing market conditions.

MTC and its related companies request permission pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act), to continue to own, operate, or charter vessels in the coastwise trade (or to own a pecuniary interest in entities that own, operate, or charter vessels in the coastwise trade) following the approval of each Intrepid Sub as operator under the appropriate ODSA.

MTC and its subsidiaries currently own 14 U.S.-flag vessels and manage 17 Ready Reserve Fleet vessels and 6 privately owned U.S.-flag vessels. Listed below are those U.S.-flag vessels that are owned and/or operated by MTC in the

[1] By letter dated October 21, 1998, Occidental Chemical, Ocean Chemical Transport and Ocean Chemical Carriers support the request of MTC for Ocean Chemical Transport and Ocean Chemical Carriers to assign the ODSAs to subsidiaries of Intrepid Ship Management a subsidiary of MTC.

domestic trade showing areas of specific service:

Owned vessels	Area of operation	Cargo type	Size (DWT)
MARINE CHEMIST	West Coast	Chemical Parcel	35,941
MBC–1 (Barge)	Gulf of Mexico or Gulf to Puerto Rico	Chemical Parcel	4,000
MBC–2 (Barge)	Gulf of Mexico or Gulf to Puerto Rico	Chemical Parcel	4,000
MARINE DUVAL	Texas to North Carolina	Molten Sulphur	25,131
MARINE COLUMBIA	Alaska Trade	Crude Oil	138,698
PATRIOT	Spot Trade	Product Carrier	35,662
COURIER	East Coast	Product Carrier	35,662
Vessels Operated For Other Owners:			
CHEMICAL PIONEER	Gulf of Mexico to New Jersey	Chemical Parcel	35,491
BT ALASKA	Alaska Trade	Crude Oil	191,120

MTC advises that simply changing the operator of the Vessels for purposes of the ODSAs will not change the competitive marketplace for any U.S.-flag vessels operating exclusively in the coastwise trade in competition with MTC's current U.S.-flag vessels. MTC claims non-MTC U.S.-flag vessels will face exactly the same competitive conditions after the transfer of the ODSAs as they do today. Therefore, according to MTC, no unfair competition within the meaning of section 805(a) of the Act will result from the assignment of the ODSAs.

MTC states that permitting MTC to undertake activities relating to coastwise vessels following the transfer is also consistent with the objects and policies of the Act. MTC states it is the oldest and one of the largest shipping companies in the United States and is known for its long-term relationships with its customers. MTC states it is a strong competitor as a shipowner and ship operator in the U.S. maritime industry. MTC advises that permitting MTC to continue to operate under the U.S. flag for the duration of the ODSAs supports, advances and promotes the U.S. merchant marine industry.

MTC advises that no subsidy received by MTC pursuant to the ODSAs will be used to benefit MTC's non-subsidized coastwise operations. Under modern banking and accounting practices, according to MTC, it is easy to audit the use of subsidized funds by the appropriate Intrepid Sub and provide needed assurances that funds will not be co-mingled or used for non-subsidized purposes.

As a final matter, Intrepid and MTC note that its request for permission under section 805 does not involve any issue of material fact that cannot be resolved promptly on the basis of available information.

Pursuant to sections 608 and 805 of the Act, and Article II–16 of the ODSAs, Ocean Chemical Transport, Ocean Chemical Carriers, GECC, Fleet National Bank, N.A., MTC, the MTC Subsidiaries, and each Intrepid Sub requests approval of the following:

1. Assignment of the ODSAs to the appropriate Intrepid Sub;

2. Designation of each Intrepid Sub as the Operator pursuant to the appropriate ODSAs;

3. Permission pursuant to section 805(a) of the Act for MTC to operate vessels in the coastwise trade; and

4. Such other approvals as may be required for the above-described transactions.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, referring to the docket number that appears at the top of this document with the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief. Such comments must be filed no later than 5:00 P.M. Eastern Time, November 13, 1998.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

The application and all comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

(Catalog of Federal Domestic Assistance Program No. 20. 805 Operating-Differential Subsidies (ODS)).

By order of the Maritime Administrator.

Date: October 27, 1998.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 98–29149 Filed 10–29–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 5 percent for calendar year 1999.

DATES: The rate will be in effect for the period beginning on January 1, 1999 and ending on December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW, Washington, DC 20227 (Telephone: (202) 874–6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for

applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1999 reflects the average investment rates for the 12-month period ended September 30, 1998.

Dated: October 26, 1998.

Bettsy H. Lane,

Acting Assistant Commissioner, Federal Finance.

[FR Doc. 98–29095 Filed 10–29–98; 8:45 am]

BILLING CODE 4810–35–M

Friday
October 30, 1998

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials: Requirement for DOT Specification Cylinders; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180

[Docket No. RSPA–98–3684(HM–220)]

RIN 2137–AA92

Hazardous Materials: Requirements for DOT Specification Cylinders

AGENCY: Research and Special Programs Administration (RSPA) DOT.

ACTION: Notice of proposed rulemaking (NPRM) and public meeting.

SUMMARY: RSPA proposes to amend certain requirements in the Hazardous Materials Regulations (HMR) to establish four new DOT cylinder specifications and to revise the requirements for maintenance, requalification, and repair of all DOT specification cylinders. In addition, RSPA proposes to: revise the requirements for approval of cylinder requalifiers, independent inspection agencies, and nondomestic chemical analysis and tests; revise the cylinder requalification, maintenance and repair requirements; and to revise the requirements for hazardous materials that are authorized to be offered for transportation in cylinders. Finally, this NPRM incorporates a proposal to remove from use aluminum alloy 6351–T6 that was published in an advance notice under Docket HM–176A and terminates that docket (RIN: 2131–AB51).

This action is being taken to—simplify the HMR for construction of cylinders; provide for flexibility in the design, construction and use of cylinders; recognize recent advances in cylinder manufacturing and requalification technologies; promote safety though simplification of the regulations; reduce the need for exemptions; and facilitate international commerce. The intended effect of this action is to enhance the safe transportation of hazardous materials in cylinders.

DATES: Comment Date: Comments must be received on or before January 28, 1999.

Public Meeting Date: A public meeting will be held on December 8, 1998; from 9:30 am to 4:00 pm. An additional meeting may be scheduled if there is substantial interest.

ADDRESSES: *Written Comments:* Address comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. Comments should identify the docket number, RSPA 98–3684(HM–220), and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address.

Public dockets may be reviewed between the hours of 10:00 a.m. to 5:00 p.m., Monday thru Friday, excluding Federal holidays. In addition, comments can be reviewed by accessing the DOT Homepage (http://www.dot.gov). Comments may also be submitted by E-mail to ''rules@rspa.dot.gov''. In every case, the comment should refer to the Docket number set forth above.

Public Meeting: The public meeting will be held in Room 3200–3204 at the U.S. Department of Transportation's Nassif Building, 400 7th Street SW, Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: Cheryl Freeman, telephone number (202) 366–4545, Office of Hazardous Materials Technology, or Ryan Posten, telephone number (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, authorizes the Secretary of Transportation to regulate the manufacture and continuing qualification of packagings used to transport hazardous materials in commerce, or packagings certified under Federal hazmat law for the transportation of hazardous materials in commerce. The HMR, 49 CFR parts 171–180, contain requirements for the manufacture, use, and requalification of cylinders subject to Federal hazmat law, including defining materials and methods of construction, the frequency and manner of inspection and testing, standards for cylinder rejection and condemnation, cylinder marking and recordkeeping, authorizations for packaging hazardous materials in cylinders, filling, loading, unloading, and carriage in transportation.

Historically, Federal authority to regulate the transportation of compressed gases was given to the former Interstate Commerce Commission (ICC) through the Transportation of Explosives Act, 35 Stat. 1135, section 233 (March 4, 1909), which was later amended in 1921, at 41 Stat. 1445, § 233. In 1911 the ICC adopted a series of ''Shipping Container Specifications,'' among which the ICC 3 specification for seamless steel cylinders was codified. That same year, the ICC 4 specification for a lap-welded cylinder for anhydrous ammonia was also published. As the welding process improved, from the riveted/brazed welds to resistance welding and then butt welding by the metal-arc process, the ICC 4 Specification series was expanded to include the 4BA, the 4BW, and others. By 1914, two other cylinder specifications were codified: the ICC 7 specification for steel cylinders for low pressure, nonliquefied gas, (which have carried over to the present regulations, but not as specification 7) and the ICC 8 specification for acetylene gas cylinders, which still exists today with minor changes.

In 1930, the ICC implemented regulations for periodic inspection and testing of cylinders; the regulations, as amended, were first published in the **Federal Register** on December 12, 1940 (5 FR 4908). During the 1930's and 1940's, the Compressed Gas Association (CGA) developed and refined the water jacket test method for determining the serviceability of a cylinder. During World War II, there was a shortage of high pressure gas cylinders. Because of CGA's work on steel wall stress limitations, the ICC granted ''temporary'' regulatory relief to increase the gas carrying capacity of existing cylinders by allowing the cylinders to be filled 10% over their marked service pressures, and by marking those cylinders with a plus, ''+'', mark. Ten years later, the regulations were codified into the Code of Federal Regulations (15 FR 8261; Dec. 2, 1950). In 1967, pursuant to the Department of Transportation Act, Pub. L. 89–670, 80 Stat. 931, regulatory responsibility for the transportation of dangerous articles in commerce was transferred from the ICC to DOT.

Through rulemaking and the issuance of exemptions from the regulations under 49 CFR part 107, subpart B, materials other than steel (e.g., aluminum and composite cylinders) now are authorized for use. Nevertheless, apart from the substitution of the ''DOT'' identifier for the ''ICC'' identifier, many of today's basic requirements remain virtually unchanged from the time they were first incorporated into the regulations.

Over the years, RSPA has received numerous petitions for rulemaking requesting various changes to the cylinder requirements. CGA filed most of these petitions that request changes to

the cylinder specifications. In 1969, CGA submitted a petition (P–69) containing six new proposals and revising eight previously-filed petitions. Many of these 14 petitions were handled in subsequent rulemakings such as Docket HM–69 adding a DOT 39 non-reusable, non-refillable specification cylinder (August 24, 1971; 36 FR 16579), Docket HM–85 updating the DOT–4L cylinder material properties (Nov. 5, 1971; 36 FR 21287), and Docket HM–99 adding the DOT–3T specification cylinder (Aug. 15, 1973; 38 FR 21989).

In 1981, RSPA adopted a DOT 3AL specification under Docket HM–176 (46 FR 62452). This new specification for a seamless aluminum cylinder, made of definitely prescribed alloys, was based in part on the petitions received from industry and an agency initiative to consolidate and eliminate the need for seven exemptions authorizing the manufacture of seamless aluminum cylinders. In 1984, CGA petitioned (P–953) to include a welded stainless steel cylinder similar to the DOT–4BW. At that time, CGA proposed the designation ''4SS'' for the new stainless steel cylinder.

In 1990, CGA petitioned to add a new 3F specification for a seamless steel compressed gas cylinder designed for a high stress level similar to the DOT–3T, but with a stronger structural integrity similar to the DOT–3AA cylinder. The proposed 3FM specification provides for a greater efficiency in gas transportation.

The above-mentioned petitions were given full consideration in the development of this NPRM. In developing this NPRM, RSPA worked closely with the cylinder manufacturing and maintenance industries, and held several meetings with CGA to obtain clarification of the CGA petitions. RSPA also held public outreach meetings with industry that were announced in the **Federal Register**. The industry proposals and petitions have been refined by RSPA based on RSPA's compliance inspections and exemption program, interpretations issued by RSPA, and certain industry consensus standards and practices that have proven to be safe. RSPA believes the proposals in this NPRM are consistent with sound industry practice and incorporate modern manufacture and requalification technology.

Some of the more significant proposals contained in this NPRM are:

1. The establishment of four new cylinder specifications that are more performance-oriented and the removal of several obsolete specifications. These proposed specifications are expressed in metric units, require marking of the cylinder with test pressure in place of service pressure, and are distinguishable by their specification designation markings.

2. The new specifications allows greater flexibility in the design and construction of metric-marked cylinders.

3. Independent inspection of all metric-marked cylinders, both seamless and welded.

4. Design qualification testing of metric-marked cylinders.

5. The requalification of metric-marked cylinders and certain nonmetric-marked cylinders using thickness and shear wave ultrasonic testing in place of the volumetric pressure test.

6. Requiring any person who performs a requalification function that requires marking an inspection or retest date on the cylinder to have approval from the Associate Administrator for Hazardous Materials Safety (herein after referred to as the Associate Administrator).

7. Standardizing the requirements for the repair and rebuilding of DOT 4 series cylinders, other than the DOT 4L.

8. Allowing a 10-year interval for requalification of DOT 3-series metric-marked cylinders used in certain types of service.

9. Allowing a 15-year interval for requalification of certain DOT 4-series metric-marked cylinders used in certain types of service.

10. Allowing, upon approval by the Associate Administrator, the application of requalification markings on cylinders by using alternative methods that produce durable legible marks.

11. Implementing valve damage protection and puncture resistance criteria for all DOT specification cylinders used for Division 2.3 or 6.1 materials in Hazard Zone B, and puncture resistance criteria for those in Hazard Zone A.

12. Discontinuing authorization for a filled cylinder with a specified service life from being offered for transportation in commerce after its service life has expired.

13. Providing filling pressures for metric-marked cylinders based on critical temperature, test pressure, and draft ISO Standard 11622.

14. Requiring that pressure relief devices on all metric-marked specification cylinders be set at no less than test pressure. Requiring that pressure relief devices on all 3-series, nonmetric-marked specification cylinders be set at no less than test pressure from the first requalification due after the effective date of the final rule.

II. New specification Standards for Metric-marked Cylinders

A. Consolidation of Cylinder Standards

As discussed above, the current cylinder requirements have their origin in the early 1900's. The regulations were developed in a piecemeal fashion, with adjustments being made to address particular situations and problems on a case-by-case basis. This NPRM represents RSPA's first comprehensive review of the cylinder requirements.

RSPA proposes to establish four new cylinder specifications for seamless and welded cylinders. These proposed cylinder specifications are more performance oriented and incorporate provisions that recognize certain domestic and international practices. Cylinders made to these specifications would be marked in metric units and would be distinguished by a unique specification marking that closely approximates the markings in draft International Standards Organization (ISO) and the European Committee for Standardization (CEN), Technical Committee, entitled ISO/TC58/SC4 ''Gas Cylinders Operational Requirements,'' based on CEN Standard EN 1089–1, ''Transportable gas cylinders—Gas cylinder identification—Part 1: Stampmarking.''

The new seamless cylinder specifications are identified as DOT 3M, 3ALM, and 3FM. The welded cylinder specification is identified as the DOT 4M. Eventually, RSPA anticipates that the DOT 3M specification will replace the current DOT 3A, 3AA, 3AX, 3AAX, 3B, and 3BN specifications. The DOT 3ALM specification will replace the 3AL specifications. The DOT 3FM will replace the higher strength 3AA and the 3T specifications. The DOT 4M will replace the 4B, 4BA, 4BW, 4B240X, 4B240ET, and 4E. In future rulemakings, RSPA plans to propose new metric-marked cylinder specifications to replace the current specifications for the DOT 3E, 3HT, 4D, 4DA and 4DS; the 4L; the 8 and 8AL; and the DOT 39.

The basic specification requirements, those common to most metric-marked cylinders, are in proposed § 178.69. This section contains definitions, material of construction, duties of the inspector, and criteria for all design and production qualification tests that may be required by the individual specifications. Proposed § 178.70 contains requirements applicable to seamless cylinders. The individual specifications, containing additional requirements, are in § 178.71 for the DOT 3M, § 178.72 for the DOT 3ALM, and § 178.73 for the DOT 3FM. Proposed § 178.81 contains

requirements applicable to DOT 4M welded cylinders.

In all cases where the new proposed specifications differ, the new specification requirements will have a level of integrity that is equivalent to, or greater than, the current nonmetric specification requirements. Significant changes from current requirements are discussed further in this preamble.

B. Cylinder Filling Limits

CGA petitioned RSPA to change the test pressure from 5/3 times service pressure for currently authorized DOT specification seamless cylinders to 3/2 times service pressure for newly constructed DOT specification seamless cylinders. In effect, the CGA proposal would increase the filling limit for most of the new seamless DOT specification cylinders to that currently authorized for cylinders marked with a ''+'' sign (see 49 CFR 173.302(c)). In the historical and technical information provided to support its petition, CGA stated:

I. Background

In 1942 during the height of industrial production for WWII, a shortage of high pressure gas cylinders developed. The shortage was hampering the War effort. The three manufacturers of large size cylinders were also forging shells and bombs and did not have capacity to forge those and the required quantities of high pressure steel cylinders.

The War Production Board brought this concern to the Compressed Gas Association (CGA) to seek a remedy for the shortage of high pressure cylinders. One idea was to start up new production by spinning seamless tubing, which was initiated by Cueno-Press and Taylor Forge; but that would take months. An immediate ''temporary'' relief was conceived which was to increase gas carrying capacity by allowing an ''overfill'' of existing cylinders. After careful study, the increase of 10% in filling pressure (i.e., from 2015 to 2215 psi) was considered safe and technically sound because of the conservative design required by DOT Specification 3A and of the existing high pressure cylinders produced thereto.

For example: A 10% increase in wall stress at the increased filling pressure maintained the operating stress well below the yield point of the steel; and so, cyclic fatigue failure would not become a factor for the ductile, low strength steel. Furthermore, the operating stress would still be far below the ultimate tensile strength providing an adequate safety factor which related service pressure to rupture pressure; and the only way the cylinder pressure of permanent gases could reach burst pressure was by involvement in a fire.

By joint agreement between the War Production Board, Interstate Commerce Commission (ICC) and the Gas Industry, it was decided to immediately allow a ''10% overfill'' for the existing cylinder fleet. This was to be allowed for both *flammable* and *non-flammable* permanent gases.

To make this effective required a change in the ''Regulations'' covering ''Charging of Cylinders with Non-liquefied Compressed Gases'' because it was to be applied to existing cylinders as well as new production. Therefore, section 173.302 was changed and 178 was not changed to cover cylinder design and production. Thus, a 10% increase in the gas carrying capacity of the existing cylinder fleet and new current production was immediately achieved. This had the effect of adding 10% additional cylinders.

II. Technical Rationale for Allowing 10% Higher Fill Pressures

A. Introduction

The fleet of DOT 3 Series cylinders in use during the war years performed safely without a service failure, notably from fatigue or gas pressure rupture. Thus, the carefully considered decision to allow the charging pressure to be increased by 10% was considered to be proven safe and technically valid.

The compressed gas industry monitored performance of their cylinder fleets and concluded that the ''temporary'' over-filling procedure could safely become a permanent regulation. However, CGA decided to recommend certain controls to justify permanent continuation of this change which effected the design safety factor. Those controls are now contained in CFR Title 49, clause 173.302 (c) entitled ''Special filling limits for Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders''.

The technical rationale for those controls was: * * *

(1) ''That such cylinders are equipped with frangible disc safety relief devices (without fusible metal backing) having a bursting pressure not exceeding the minimum prescribed test pressure.''

Rationale: This was to guarantee that cylinder pressure from any source could never reach the cylinder design burst pressure. Therefore, lowering the ratio of service pressure to rupture pressure, was meaningless because the cylinders would be equipped with a ''rupture port'' which would vent the gas pressure at a pre-determined pressure and prevent the cylinder from ever reaching its ''burst'' pressure. * * *

(2) ''That the elastic expansion shall have been determined at the time of the last test or retest by the water jacket method.''

Rationale: In the 1930s and 1940s the CGA had developed and refined the water jacket test method, and developed the mathematical relationship of wall stresses as measured by the elastic expansion of individual cylinder designs. The average wall stress as determined by elastic expansion measured by the water jacket hydrostatic test was limited to a specified stress less than the permitted maximum design stress. For example, 3AA design cylinders were to be rejected if the elastic expansion exceeded a value equivalent to the strain developed at an average wall stress of 67,000 psi; whereas, the design wall stress limit in 178.37–10(b) is 70,000 psi. This 4% decrease in wall stress was selected because elastic expansion measures the average effective wall thickness and not the minimum. At the same time it was concluded that a small increase (i.e., 4%) in the stress at isolated areas of a cylinder could be safely tolerated to allow for localized damage or thinning; and a ''Maximum wall stress limitation'' was set; e.g., 73,000 psi for 3AA design cylinders. This procedure of elastic expansion control was developed to further justify the permanent use of the ''10% overfill'' by guaranteeing that such cylinders would be controlled by limiting the loss of wall thickness so that the stress at service pressure would be below the yield point of the cylinder steel. * * *

(3) ''That either the average wall stress or the maximum wall stress shall not exceed the wall stress limitations shown in the following table.''

Rationale: Wall stress limitations for both average wall and isolated spots were developed for each ''class of steel'' used for ICC 3, DOT 3A, and DOT 3AA cylinder designs. (Much later DOT–3T was added.) These limits were selected from known physical properties of these steel classes; and were set to assure that stress at operation pressures were: (1) well below yield point and (2) that an adequate burst pressure to service pressure ratio was obtained. This clause amplifies the preceding clause 2.

(4) ''That an external and internal visual examination made the time of test or retest shows the cylinder to be free from excessive corrosion, pitting, or dangerous defects.''

Rationale: The body of data and service experience available within the CGA had proven that the design criterion for DOT high pressure cylinders was eminently safe; especially as regards cycle life and rupture in service. The only cause of cyclic or tensile rupture would be damage inflicted during manufacture or service. Thus, the visual inspection before and during use was considered to be an essential safety measure, which continues to be true today.

(5) ''That a plus sign (+) be added following the test date marking on the cylinder to indicate compliance with paragraphs (c) (2), (3) and (4) of this section.''

Rationale: This was to force both the cylinder manufacturer and user to take a physical act to signify their guarantee of compliance with the control methods. This also was an easily discerned mark that permitted personnel to identify which cylinders were satisfactory, safe and qualified for charging to the ''10% overfill''.

B. Wall Stress and Safety Factors of Series 3 DOT Cylinders

The most common high pressure cylinder in use in 1942 was the ICC–3A–2015 with size of 9″ O.D. x 51″ long, rated at 220 cubic feet oxygen capacity. This cylinder made of normalized intermediate manganese steel had an ultimate tensile strength of about 95,000 psi and had excellent ductility and good charpy impact strength at −50°F. to assure safe fracture performance. The design stress at test pressure was 49,500 psi which with the 5/3 test pressure ratio allows a stress of 29,600 psi at 2015 psi service pressure. The yield point was about 69,000 psi (about 0.73 x U.T.S.). Thus the service stress was about 50% of yield stress, which level assured a long (virtually infinite) cycle life. The burst stress to service stress ratio (safety factor) was about 3.2 (95,000 ÷ 29,600).* * *

This ratio of operating stress compared to ultimate strength was obviously a conservative design. The conservatism is more obvious in view of the fact that the cylinders were seamless, forged, high quality steel pressure vessels which have no stress concentration points in the longitudinal plane of major stress. Furthermore, they were used in non-corrosive gas service and have no source to increase the contained pressure during use except by the small fluctuations in ambient temperature or a fire. The cylinders are also subjected to periodic requalification. In view of these facts/data and the excellent service record, the decision was made in 1942 to allow stress to increase about 32,600 psi at service pressure for the ''10% overfill''. This equates to a working stress to burst strength ratio of 2.9 (95,000 ÷ 32,600).

Thus the ''10% overfill'' was considered technically appropriate and eminently safe as a way to increase the oxygen carrying capacity from 220 CF to 244 CF. These cylinders have continued in service for over 50 years with a perfect safety record as regards cyclic or pressure rupture in service. The same effective stress at test pressure can be achieved by testing either at 5/3 of 2015 or 3/2 of 2215. These pressures are 3358 and 3323 which stresses the wall to 49,350 and 48,720 psi respectively. This 1.2% difference in test pressure stress would be inconsequential with respect to cylinder safety. Therefore, the test pressure in the DOT 3A, 3AA, and 3T specifications can safely be changed to 3/2 instead of 5/3 service pressure. The following paragraph describes graphic presentation of the situation with intermediate manganese normalized and chrome-moly quenched and tempered, which represents virtually 100% of the 3A and 3AA cylinders in the U.S.

* * *

It is proposed to write all the ''10% overfill'' into the design conditions for DOT 3A, 3AX, 3AA, 3AAX, 3F (new) and 3T. This can be accomplished by merely changing the required test pressure from 5/3 x service pressure to 3/2 x service pressure. For all intents and purposes, the cylinders would be exactly the same as discussed above. * * *

III. Conclusions

1. DOT 3A and 3AA cylinders have been in use since 1942 (54 years) with a ratio of test pressure to service pressure of 3/2. At time of manufacture or retest, the cylinders are tested at 5/3 x service pressure; but the service pressure is increased by 10% for filling.

2. The 10% overfill pressure times 3/2 results in a wall stress at test pressure only 1% less than the requirement to test at 5/3 times marked service pressure.

3. The 3/2 test pressure would result in a calculated minimum wall of barely 0.001 inch less for a current cylinder with a 0.250 wall minimum.

4. The tiny decrease in wall thickness and effect of 1% lower stress at test pressure would have no effect in overall cylinder safety.

5. The service record since 1942 (54 years) has been perfect as regards rupture under gas pressure and cyclic fatigue characteristic. The change to 3/2 test versus 5/3 does not change any measurable characteristic which would effect these failure modes.

6. The ASME Code uses a 3/2 test pressure to working pressure ratio.

7. Europe (18 countries) uses the 3/2 test to service pressure ratio.

IV. Recommendation

The minimum prescribed test pressure shall be 3/2 times the marked service pressure for all cylinders with a marked service of 500 psi or greater for all Series 3 steel cylinders. This should also be considered for cylinders made of nickel, aluminum or stainless steel.

In considering the issue of cylinder filling limits, RSPA also reviewed technical information supplied by cylinder manufacturers and by holders of exemptions that authorize either a test pressure of 3/2 times service pressure or 10% overfill for materials not currently specified in 49 CFR 173.302(c), the hazardous materials information system data base for incidents involving ''+'' marked cylinders, and the work currently being done by the ISO and the United Nations Group of Experts on the Transport of Dangerous Goods. After reviewing all the available information, RSPA has concluded that from a transportation safety perspective, there is no technical reason or safety experience which would prohibit increasing the cylinder filling limits for seamless cylinders to those comparable to the levels currently authorized in 49 CFR 173.302(c). Therefore, RSPA has accepted the CGA proposal to increase the filling limits for new cylinders, in principle, but has chosen to limit the proposal for increased filling limits to metric-marked DOT Specification cylinders. Additionally, RSPA has not changed the requirements in 49 CFR 173.302(c) for the current DOT specification cylinders, but has moved them to proposed § 173.302a(b).

With regards to existing cylinders, RSPA is considering a process for accepting certain DOT specification cylinders as meeting the new metric specifications, but is still considering various conversion criteria. RSPA solicits comments from interested persons as to the interest and feasibility of developing such a conversion program and, if feasible, specific criteria for requalifying and conversion of existing cylinders.

C. Specification Markings on Metric-marked Cylinders

In the CGA submission to RSPA, it was requested that cylinders be marked in bar rather than psig. Bar is an internationally accepted metric unit for pressure in the compressed gas industry. This change would help make marking DOT specification cylinders consistent with the practice in most European countries which are currently marking cylinders with the test pressure shown in bar.

While considering this request, RSPA reviewed its current marking requirements as well as two draft documents on the subject of cylinder marking being considered by the ISO and the CEN. The documents are ISO/DIS 13769, ''Gas cylinders—Stamp marking,'' and CEN Standard EN 1089–1, ''Transportable gas cylinders—Gas cylinder identification—Part 1: Stampmarking.''

Based upon this review, RSPA proposes to change the way DOT specification cylinders are marked. The new marking scheme will change the number and sequence of marks required to be placed on DOT specification cylinders by manufacturers and is consistent with the sequence being proposed by both ISO and CEN. However, RSPA does not proposed to require all of the cylinder marks contained in either the ISO or CEN documents. The proposed marking scheme will also make it easier to identify those cylinders manufactured to the proposed specifications. Additionally, the marking scheme is similar to the type of marking scheme contained in the United Nations Recommendations for the Transport of Dangerous Good for non-bulk packagings and intermediate bulk containers.

The proposed marking sequence, with each element separated by a slash mark, is as follows:

DOT Specification
Country of origin
Manufacturer's identification
Serial number
Stamp for non-destructive testing (if applicable)
Minimum wall thickness
Water capacity (liters)
Test pressure (bar)
Identification of alloy
Tare weight (kg)
Identification of inspection agency
Test date
REE (if applicable)

The most significant change is the marking of the new specification cylinders with test pressure instead of service pressure. DOT specification cylinders have always been designed to test pressure rather than service pressure. Specifically, the stress formulas used to determine the minimum wall thickness of DOT specification cylinders are calculated at the minimum test pressure.

Additionally, as currently authorized in 49 CFR 173.302(c), many cylinders used to transport compressed gases which are not liquefied, dissolved, toxic or flammable are filled to a pressure 10% in excess of their marked service pressure and 49 CFR 173.304(f) specifies, with limited exceptions, that the pressure in the container at 130°F shall not exceed 5/4 times the marked service pressure. While marking the test pressure rather than the service pressure will require the training of persons who fill cylinders, it should not have any adverse safety effects since inadvertently filling a cylinder to the marked test pressure, in bar, would result in the cylinder being filled to a lower pressure than the currently marked service pressure in psig. Further, most cylinders are filled by a person who uses a filling table that shows the values already adjusted for changes in temperature and elevation. RSPA envisions that cylinders marked with test pressure will also be filled by using filling tables.

III. Independent Inspection—New DOT Specification Cylinders

A DOT specification cylinder is, and has been for the past sixty years, a widely recognized standard for the safe transportation of compressed gases. This wide acceptance has resulted in significant economic benefit to domestic industry far beyond the value of the cylinders sold internationally. Market demand for gases and equipment has increased as a direct result of the reputation of the DOT cylinder for strength, durability and quality.

Since the early 1900's, cylinders manufactured under DOT's ''high pressure'' specifications have required independent inspection, originally referred to as ''disinterested inspection.'' Occasionally, RSPA receives complaints from companies about costs of independent inspection or claims that the companies' employees are as knowledgeable and qualified, if not more so, as the independent inspector. However, RSPA's Office of Hazardous Materials Enforcement, through its compliance inspection program, has found a higher level of compliance with the regulations when inspection and certification functions are carried out by an Independent Inspection Agency (IIA) instead of by an employee of the manufacturing company. In order for DOT specification cylinders to be acceptable for service in most foreign countries, cylinders must be certified through an inspection process which is not controlled by the cylinder manufacturer. Since 1977, all DOT specification cylinders manufactured outside the United States under the RSPA foreign cylinder approvals program are required to be inspected and certified by an IIA.

In order to maintain the high level of safety established over the past 100 years, to maintain the acceptability of DOT specification cylinders worldwide, and to facilitate the harmonization between domestic and foreign cylinder specifications, RSPA is proposing that all cylinders manufactured or rebuilt to the new DOT metric-marked cylinder specifications be subject to inspection by an IIA. In effect, this would continue the current DOT inspection requirements for seamless cylinders and extend the practice to welded cylinders.

IV. DOT Approval of Cylinder Requalifiers

RSPA proposes that any person who requalifies a DOT specification cylinder must be approved by the Associate Administrator prior to performing any requalification function that requires an inspection or retest date to be marked on the cylinder. The affected functions include performance of a visual inspection, pressure test, ultrasonic thickness test, repair, or the rebuilding of cylinders. This proposal will enhance the accountability of the cylinder requalification process.

Currently, § 173.34(e)(13) permits a cylinder used exclusively for certain liquefied gases to be requalified for use by performing an external visual inspection and marking the cylinder with the test date and an ''E''. The ''E'' indicates that the cylinder was requalified by external visual inspection in accordance with CGA Pamphlet C–6 rather than by a hydrostatic test. A person who performs only external visual inspections is not required to obtain an approval from, or register with, the Associate Administrator. Although current § 173.34(e)(13) requires these persons to maintain records, RSPA does not know who or how many persons requalify and mark cylinders with an inspection date and an ''E'', or the locations of their places of business. Also, RSPA does not know whether these persons have the knowledge and skills necessary to perform the required functions, including use of required inspection standards.

RSPA inspectors have frequently observed DOT specification cylinders, primarily in liquefied petroleum gas service, that bear markings representing that they were requalified for use. The markings reflected dates of recent requalification by external visual inspection. One cylinder, marked with the letter ''E'' and the date ''6 98,'' was examined by RSPA personnel on June 19, 1998, and found to be rusted to an extent that there is no doubt that the rust formed long before the marked inspection date. Considering the amount of undisturbed rust on the cylinder, it was apparent that the person requalifying the cylinder did not properly prepare it for inspection by first completely removing all rust from the exterior surface of the cylinder, as required by paragraph 3.1 of CGA Pamphlet C–6, which was developed by the compressed gas industry for adoption by reference as Federal regulations.

In reviewing the approach for resolving this issue, RSPA considered five options:

(1) Continue the current provision that allows persons who are not known to RSPA to requalify cylinders by performing visual inspections;

(2) Adopt a registration program that would require persons who perform visual requalification to be registered with RSPA and to mark their requalifier identification numbers (RIN) on the cylinders they inspect;

(3) Adopt an approvals program requiring that persons performing requalifications of cylinders by visual inspection be approved by RSPA upon written application containing statements regarding their qualifications;

(4) Adopt an approvals program that would require persons performing visual requalifications to be reviewed by an independent inspection agency; and

(5) Discontinue visual requalification of cylinders, thereby requiring all affected cylinders to be hydrostatically retested.

RSPA selected option 3 for this NPRM because it will not impose the burden and added cost of employing an independent inspection agency while ensuring the accountability of a person performing visual requalifications and providing RSPA the authority to revoke or suspend the person's approval for demonstrated non-compliance with the requalification requirements. Also, by requiring a certification that an applicant has the ability to perform requalifications, RSPA believes each applicant's awareness of the importance of compliance will be heightened. RSPA solicits comments on these options and others that RSPA may not have considered.

V. Requalification Markings

RSPA proposes to amend § 171.2(d) to prohibit the misrepresentation of a requalification identification number (RIN) marking. Over the years, through its compliance program, RSPA has been

in contact with dozens of individuals who did not perform the required hydrostatic tests, but stamped the cylinders as though each cylinder had passed the inspections and tests. The steel stamps used to mark the cylinders are readily available, low-cost and simple to use. RSPA believes that these and other factors (e.g., the high cost of purchasing and maintaining hydrostatic test equipment when compared to the mere cost of obtaining a set of steel stamps) provide an economic inducement for some individuals to engage in fraudulent activities. Based on recent enforcement data, this safety problem appears to be more widespread than RSPA originally thought. RSPA is concerned about the number of cylinders that are fraudulently stamped and then are used to transport hazardous materials in commerce. These cylinders, whose structural integrity has not been verified, pose substantial risks to health, safety and property. When RSPA discovers these situations, RSPA publishes a safety alert notice (see Notice No. 97–2, 62 FR 19651; Notice No. 97–3, 62 FR 24548) and, where appropriate, refers the matter to the Department of Justice for possible criminal prosecution (*see United States* v. *American Oxygen Company, et al.*, Docket No. 97–533 (D.N.M.)).

RSPA is also soliciting comments on the issue of what future method or methods should be used to mark DOT specification cylinders during the requalification process. Currently, after a cylinder meets the requalification standards (e.g., passes a hydrostatic test, internal and external visual examinations, etc.), the requalifier stamps the month and year of the test and its RIN on the cylinder. This marking is normally accomplished with steel stamps (Note: currently under an exemption certain fiber-wrapped cylinders may be marked with labels.). Through this rulemaking, RSPA is evaluating the merits of new marking methods for DOT specification cylinders following the requalification process.

RSPA is considering incorporating a number of marking options (e.g., labeling, marking with a laser, replacing the RIN with a symbol that is difficult to duplicate, etc.). RSPA is requesting comments from the public as to the feasibility, costs and benefits of alternatives to the metal stamping method and whether the public believes there is justification for RSPA adopting an alternative method.

VI. Toxic Gases

Division 2.3 and 6.1, Hazard Zone A and B toxic inhalation hazard (TIH) materials present a substantial risk to the public, transport workers and emergency responders even when small quantities are released. For smaller cylinders, shifting freight and dropping are major sources of package damage and releases of hazardous materials. Cylinders are sometimes dropped in handling, resulting in valve damage or cylinder punctures. In a study of Hazardous Materials Information System (HMIS) reports for the past 10 years, RSPA found that over 30% of all reported cylinder incidents involved valve damage. Valve damage occurs when valves are inadequately protected by outer packagings or valve protection devices. Punctures most commonly occur when a cylinder is impacted by handling equipment or other cargo or is dropped upon other cargo or handling equipment. To reduce the probability that a handling incident may result in the release of a TIH material, RSPA proposes to expand the current drop test requirement for cylinders containing TIH materials to include Hazard Zone B materials and a performance test for cylinder puncture for TIH materials in Hazard Zones A and B. These proposed performance tests apply to bare cylinders and cylinders packed in strong outside packagings.

The performance test for puncture is based upon dropping a cylinder seven feet; the same height used in the drop test for cylinder valve protection. The seven-foot drop height represents the typical distance that an industrial gas cylinder would encounter if it fell from a truck. RSPA chose an angle iron (2 inch by 2 inch by 0.25 inch thick) as a typical penetrator. The major parameters controlling cylinder penetration are cylinder material, wall thickness, drop height and the cylinder's gross weight. For consistency, RSPA proposes the cylinder weight be the water-filled weight. To represent in-service stress conditions, the proposed test is performed on the filled cylinder charged to service pressure for nonmetric-marked cylinders and 67% of test pressure for metric-marked cylinders.

The puncture-performance test would be required for metric-marked and nonmetric-marked cylinders. To facilitate implementation of this requirement for nonmetric-marked cylinders, RSPA is proposing a two-year implementation period. RSPA also proposes a table showing threshold values of wall thickness for cylinders of a particular specification, material, and water-filled weight range. Cylinders meeting the specified criteria with a minimum side wall thickness equal to or greater than the value specified in the table would qualify under current § 173.40(d)(1) without puncture testing. To minimize the testing burden, RSPA plans to perform puncture testing to develop initial values for the table. RSPA is requesting that cylinder manufacturers and shippers assist RSPA in developing this table. RSPA is also soliciting comments on whether welded cylinders and cylinders with wall thickness of 2.0 mm or less are used for the transportation of Division 2.3 and 6.1 Hazard Zone B, C, and D materials. RSPA will use this information to further develop the puncture testing threshold table. When sufficient data is available, RSPA would consider the development of a graph or calculation as a more practical means to depict a minimum thickness threshold for puncture resistance.

VII. Discontinuation of Certain Cylinder Specifications

RSPA proposes to discontinue the use of the following DOT cylinder specifications: 3C, 3D, 4, 4A, 4B240X, 4B240FLW, 4C, 9, 25, 26, 33, 38, 40 and 41. RSPA believes that these cylinders are obsolete and no longer in general use. Authorization to manufacture these cylinders was removed from the regulations on September 11, 1980 (45 FR 59887). Comments are solicited from persons who may be using these cylinders.

If the proposals contained in this NPRM lead to publication of a final rule, RSPA proposes to provide a transition period of five years from the effective date of the final rule for the continued construction of cylinders made to the following DOT specifications: 3A, 3AX, 3AA, 3AAX, 3AL, 3B, 3T, 3BN, 4B, 4BA, 4BW, 4B240ET, and 4E. RSPA believes a five-year transition period for new construction of cylinders conforming to these specifications will reduce the burdens incurred by persons affected by this proposal. Cylinders made to these specifications would be authorized for continued use as long as they meet standards for periodic requalification. Voluntary compliance with the new metric or revised requirements would be authorized 90 days following publication of the final rule in the **Federal Register**.

VIII. Pressure Relief Device (PRD) Systems

In a previous rulemaking (see, Docket No. HM–220A, 61 FR 26750, 26756; May 28, 1996), RSPA proposed voluntary compliance with CGA Pamphlet S–1.1, paragraph 9.1.1.1, which would require verification that the PRDs operate properly. RSPA made this proposal based on the view that

over time certain components within a PRD will cease to function as designed. Thus, RSPA proposed adopting paragraph 9.1.1.1 which would have required that the operation of the PRD be verified. A number of commenters opposed this proposal citing its cost and the lack of incident data supporting adoption of this requirement. Based on the need to gather more data and review the cost estimates submitted, RSPA withdrew the proposal and agreed to consider the proposal in a future rulemaking. RSPA continues to evaluate adopting this industry standard.

Since publication of HM–220A final rule, gas industry representatives have expressed the view that over time most polymers, used as seats in PRDs, vulcanize. Vulcanization prevents the devices from functioning as designed. RSPA solicits information on the following:

1. Data and comments on the cost, effectiveness and need for adopting paragraph 9.1.1.1, in CGA Pamphlet S–1.1.

2. Additional incident data from State and local officials concerning incidents that involved compressed gas cylinders which may not have been reported to RSPA because the incident did not involve a hazardous materials carrier or did not meet the reporting criteria specified in 49 CFR § 171.16.

3. Comments on the need to require PRD manufacturers to certify a performance range and period for their devices. Thus, a PRD would have to perform within specific limits throughout a specific life.

Public comments that address these issues will be considered in a future rulemaking.

IX. Related Rulemakings, Petitions for Rulemaking, and Safety Recommendations

Docket HM–176A (RIN 2131–AB51). RSPA proposes to amend § 178.46 to remove aluminum alloy 6351–T6 as an authorized material for the manufacture of DOT 3AL seamless cylinders. In January 1990, at RSPA's urging, manufacturers of DOT 3AL cylinders voluntarily discontinued the use of aluminum alloy 6351–T6 because cylinders made of this alloy are susceptible to cracks that could result in leaks or ruptures.

On July 10, 1987, RSPA published in the **Federal Register** a safety advisory and advance notice of proposed rulemaking (ANPRM) (Docket No. HM–176–A; 52 FR 26027) to inform all persons possessing DOT 3AL (49 CFR 178.46) cylinders, made of aluminum alloy 6351 manufactured by Luxfer USA Limited, that cracks had developed during service which occasionally resulted in leakage and loss of cylinder contents. In addition to the safety advisory, the notice identified those cylinders at risk, suggested steps that users should take to minimize risks, and requested industries' comments concerning the extent of the problem and their suggestions on corrective measures.

RSPA received 31 comments from manufacturers, distributors, and industrial users of aluminum alloy cylinders. Some commenters submitted findings of studies for cylinders manufactured with aluminum alloy 6351, including sustained load cracking (SLC) behavior testing. The majority of the comments and findings concluded that DOT 3AL cylinders made from aluminum alloy 6351, including cylinders authorized under exemption DOT–E 7235, pose a greater probability of failure than other cylinders. Further, information available to RSPA reveals that it is difficult to detect cracks in these cylinders which adds to the risks. RSPA published several notices to alert persons to the safety risk associated with cylinders manufactured to the DOT 3AL specification or under exemption DOT E–7235 and containing alloy 6351 (50 FR 32944, August 15, 1985; 58 FR 15895, March 24, 1993, 59 FR 38028, July 26, 1994). Thus, there is sufficient data which demonstrates that this alloy is not suitable for the manufacture of compressed gas cylinders and that it should be removed as an authorized construction material.

Petitions for rulemaking. RSPA has received numerous petitions for rulemaking requesting changes to the cylinder specifications and related commodity and requalification requirements. These petitions were held in abeyance and were considered in the development of this NPRM. Most of the requested changes are included in this NPRM. Because of the proposals in this NPRM to establish four new cylinder specifications and to discontinue construction of cylinders to certain current specifications, some of the requests for changes to the current regulations are no longer warranted. A summary of the petitions, with RSPA's comment shown in brackets, are as follows:

Petition No.	Request
0095	Consolidate the DOT 3-series specifications to permit unified specifications. Filed by CGA [Proposed in §§ 178.69–178.73 for metric-marked cylinders].
0154	Permit filling of non-toxic, nonliquefied flammable gases to 110% of the cylinder's marked service pressure (including hydrogen). Filed by CGA [Proposed in § 173.302b for metric-marked cylinders].
0312	Align rejection criteria of welded cylinder specifications to permit testing of second specimen from same lot if first specimen fails. Filed by the Canadian Transport Commission [Proposed in § 178.81 for metric-marked cylinders].
0324	(Request same as P–0312). Filed by the Association of American Railroads.
0457	Revise cylinder repair and rebuilding requirements. Filed by CGA [Proposed in § 180.211 for all cylinders].
0553	Amend Part 178 to change cylinder lot size in each specification. Filed by CGA [Proposed in § 178.70 for seamless metric-marked cylinders and in § 178.81 for metric-marked welded cylinders].
0652	Revise § 173.302(c)(3) table to add a fifth class of steel for DOT 3 series cylinder tubes. Filed by CGA [Proposed in § 178.70 for metric-marked cylinders].
0752	Amend the table in 178.37–5(a), by adding a column titled ''Authorized Chemical analysis (designation 10B30).'' Filed by Pressed Steel Tank. (See DOT E 8311) [Proposed in § 178.70 for metric-marked cylinders].
0823	Incorporate by reference CGA Pamphlets C–1 and C–5. (See also P–981). Filed by CGA [Incorporated by reference in § 171.7].
0866	Revise required sequence for display of specification markings on seamless aluminum cylinders and allow use of new marking techniques [Proposed in § 178.69 for metric-marked cylinders].
0953	Establish a new specification for manufacture of new welded, stainless steel cylinders. (See E–4884). Filed by CGA [Proposed in § 178.81 DOT 4M specification].
1040	Revise § 173.304(c) and (d)(4) to expand specific gravities for LPG, at 42% filling density, from 0.504–510 to 0.497–0.510. Filed by the National Propane Gas Association [Proposed in § 173.304b for metric-marked cylinders].
1071	Permit use of DOT 3AL cylinders for any gas or gas mixture that is compatible with aluminum. Filed by CGA [Proposed greater use DOT 3ALM cylinders in § 173.302b].

Petition No.	Request
1082	Revise 173.302(f) to remove 5/6 filling pressure limitation applicable to DOT 3AL cylinders. Filed by CGA [Proposed in § 173.301a for DOT 3AL cylinders and in § 173.301b for DOT 3ALM cylinders].
1087	Establish a new specification for seamless steel cylinders having a design stress of not more than 90,500 psi and a water capacity of not more than 150 pounds. (E–9001, 9370, 10047). Filed by CGA [Included in proposed new DOT 3FM specification in § 178.73].
1090	Require that a cylinder requalified by visual inspection must be marked with the retester's identification number. Filed by CGA [Proposed in § 180.213].
1189	Establish a new low pressure welded stainless steel cylinder specification. Filed by CGA. Includes P–0953 [Proposed in § 178.81 DOT 4M specification].
1229	Revise §§ 178.36 thru 178.60 to specify procedures for conducting tensile test. Filed by CGA [Proposed in § 178.69 for metric-marked cylinders].
1233	Permit nondestructive requalification testing of compressed natural gas (CNG) cylinders. Filed by FIBA [Proposed in §§ 178.69, 180.207 and 180.209 for metric-marked cylinders and certain nonmetric-marked cylinders].
1263	Revise § 173.34(e)(18) to permit the use of a permanent, non-transferrable label for retest and inspection markings on fire extinguishers. Filed by Amerex [Proposed in 180.213].
1277	Revise § 173.34(i)(4) to except DOT 4BW cylinders from heat treatment after replacement of nonpressure attachments. Filed by Manchester [Proposed in § 180.211 subject to certain conditions].

National Transportation Safety Board (NTSB) Safety Recommendations.

I–92–001

Recommends that RSPA require attachments to all DOT authorized hazardous materials packagings be designed to minimize the risk of puncturing other hazardous materials packagings during an accident situation. (Proposed in § 173.301(m))

I–90–008

Recommends that RSPA require hazardous material cargo to be secured in transportation with adequate restraint systems to prevent ejection of cargo from vehicles. (Proposed in § 177.840)

I–90–009

Recommends that RSPA require independent inspection of new and reconditioned low pressure cylinders that are consistent with present independent inspection requirements for high pressure cylinders [Proposed for 4M cylinders in § 178.69.]

X. Cross Reference Table

The following table lists the proposed paragraphs or sections and, where applicable, the corresponding paragraph or section contained in the current HMR. In some cases, the cross references are to provisions which are similar to, but not identical with current provisions.

New section	Old section
107.801	
107.803(a)	173.300a(a).
(b)	173.300a, 173.34(e)(2)(ii) third sentence.
(c) intro	173.300a(b).
(c)(1)	(b)(2).
(c)(2)	(b)(3).
(c)(3)	(b)(6).
(c)(4)	(b)(7).
(c)(5)	(a).
(c)(6)	
(c)(7)	
(d)	(c), (i).
107.805(a)	173.34(e)(2)(ii).
(b)	(e)(2)(ii).
(c)	(e)(2)(ii)(A).
(d)	(e)(2)(ii)(B).
(e)	(e)(2)(ii)(B).
(f)	
107.807(a)	173.300b.
(b)	(b).
(c)	(g).
173.301(a)	
(a)(1)	173.301(h).
(a)(2)	173.34(e)(1).
(a)(3)	(e)(17).
(a)(4)	(a)(2).
(a)(5)	(e)(1)(ii).
(a)(6)	173.301(k).
(a)(7)	
(a)(8)	
(a)(9)	
(a)(10)	173.301(k).
(b)	173.34(c).
(c)	173.301(a).
(d)	(b).
(e)	173.34(c).
(f)	173.301(d).
(g) intro	
(g)(1) thru (g) (3).	173.301(g)(1) thru (g)(3).
(h)	(g).
(i)	
(j)	(i).
(k)	
(l)	(j).
(m)	
173.301a(a)	173.301(e).
(b)	(e)(1).
(c)	(e)(2).
(d)	(f) .
(e)	173.34(b).
173.301b	
173.302(a)	173.302(a)(4), (a)(5)(i) thru (iii).
(b)	173.302(a)(4), (a)(5)(i) thru (iii).
(c)	173.301(e).
(d)	173.301(f).
173.302a(a) intro.	173.302(a).
(a)(1)	(a)(1).
(a)(2)	(a)(2).
(a)(3)	(a)(4).
(a)(4)	(a)(3).
(a)(5)	(a)(4)–(5).
(b)	(c).
(c)	(f).
(d)	(f).
(e)	(d).
173.302b	
173.304(a)	173.304(a) intro, (a)(1).
(a)(1)	(a)(4).
(a)(2)	
(a)(3)	
(b)	(b).
(c)	(a) intro.
(d)	(e).
(e)	(f).
173.304a(a)	173.304(a).
(c)	(c).
(d)	(d) .
(e)	(h).
173.304b	
173.315(p)	173.301(d)(5).
180.201	
180.203	
180.205(a)	
(b)	173.34 (e)(2).
(c) intro	(e)(1).
(c)(1)	(e)(1).
(c)(2)	
(c)(3)	(c)(3).
(c)(4)	
(d)	
(e)	(e)(17).
(f)	(e)(3).
(g)	(e)(4).
(h)	(e)(5).
(i)	(e)(6).
180.207	
180.209(a)	173.34(e) intro.
(b)	(e)(16).
(c)	(e)(9).
(d)	(e)(10).
(e)	(e)(11).
(f)	(e)(12).
(g)	(e)(13).
(h)	(e)(14).
(i)	(e)(18).
(j)	(e)(19).
(k)	
180.211	173.34(g), (i) through (l).
180.213	173.34(c), (e)(7).

New section	Old section
180.215	173.34(e)(2)(v), (e)(8), (e)(13).

XI. Summary of Regulatory Changes by Section

Part 107, Subpart I

Section 107.801–107.807

This new subpart would contain procedures whereby persons may seek approval from the Associate Administrator to be a cylinder requalifer, an independent inspection agency (IIA), or to have chemical tests or analysis performed outside the United States for DOT specification cylinders manufactured outside the United States. These requirements are contained currently in §§ 173.300a, 173.34(e) and 173.300b, respectively. This new subpart would contain the specific requirements. Current requirements in 49 CFR Subpart H of Part 107 would be referenced for minimum content of an application, the RSPA office where an application is to be filed, and the procedures that will be used to process or terminate an application for approval.

The criteria permit the selection of any person or organization, foreign as well as domestic, that is technically competent to perform the prescribed functions and is free from undue influence by persons involved with the fabrication, ownership or movement of the cylinders that the applicant, if approved, would be called upon to evaluate and certify. Under this proposal, RSPA would accept for transportation in the United States foreign-made cylinders that are similar in construction to the proposed DOT metric-marked cylinders. As part of this policy, if the United States recognizes cylinders manufactured outside the United States and approved by a third party inspector approved by another government, then equal treatment is expected of that government relative to cylinders manufactured in the United States and approved by an IIA approved by DOT. Therefore, a foreign third-party inspector, who certifies cylinders manufactured outside the United States, must submit a statement from the competent authority of the foreign government stating that similar authority is delegated to manufacturers of metric-marked cylinders in the United States and that no additional limitations are imposed.

Proposed § 107.803 (current § 173.300a) prescribes application procedures for approval or renewal as an IIA. These procedures, contained currently in § 173.300a, would also permit an IIA, upon approval by the Associate Administrator, to perform other functions relating to the cylinder requalification requirements prescribed in Part 180.

Proposed § 107.805 (current § 173.34(e)(2)) prescribes application procedures for a person seeking an approval to perform periodic cylinder requalifications. The procedures would be revised and broadened to apply to any person who performs a function after which the cylinder is required to be marked with a date as discussed in Part IV of this preamble under the heading ''DOT approval of cylinder requalifiers''. Because these provisions would be expanded to apply to repairers and rebuilders, the terms ''retester'' and ''retester identification number'' would be replaced with the terms ''requalifier'' and ''requalifier identification number,'' respectively.

Proposed § 107.807 (current § 173.300b) prescribes the application procedures for issuance or renewal of an approval to perform chemical analyses and tests outside the United States on DOT specification cylinders manufactured outside the United States.

Part 171

Section 171.2

Paragraph (d)(3) would be amended to clarify that no one may mark a requalifier identification number on a cylinder that has not been requalified in accordance with the applicable requirements.

Section 171.7

This section would incorporate the latest editions of previously approved CGA Pamphlets, incorporate certain additional ASTM and CGA standards, and add references to certain publications of the American National Standards Institute (ANSI).

Section 171.8

Definitions for ''metric-marked cylinder'' and ''nonmetric-marked cylinder'' would be added.

Section 171.12

Paragraph (b)(15) would be revised to include references to § 171.12a(b)(13).

Section 171.12a

On August 18, 1998, RSPA issued a notice of proposed rulemaking [Docket HM–215C; 63 FR 44312] which proposed to revise paragraph (b)(13) to provide reciprocity for certain Canadian specification cylinders to be transported within the United States. This HM–215C proposed change is reprinted here for the benefit of readers.

Part 172

In the § 172.101 Table, in column (8b) for the entries ''Cyanogen'', ''Germane'', and ''Iron Pentacarbonyl'' would be revised to specify packaging authorization sections that are consistent with their toxic properties.

Part 173

Section 173.34

The provisions in this section would be relocated to subpart I of part 107, § 173.301 and subpart B of part 180, as appropriate, and § 173.34 would be removed. All references to § 173.34 in the HMR, approximately 150 in number, would be removed and replaced with the appropriate section reference.

Section 173.40

The requirements for toxic materials packaged in cylinders would be revised to include an additional performance criteria for puncture resistance. The requirements in § 173.40 currently apply only to materials in Hazard Zone A. All requirements except the controls on closures would be expanded to Hazard Zone B materials. RSPA requests comments on whether cylinders with Hazard Zone B materials should be required to meet the same closure requirements required for Hazard Zone A.

As discussed earlier in this preamble, DOT 3AL cylinders made of aluminum alloy 6351–T6 are susceptible to sustained load cracking (SLC) in the neck and shoulder area of the cylinder head and, therefore, may leak in transportation. Leaks of Toxic Inhalation Hazard (TIH) materials pose a significant threat to health and safety. At least two major gas suppliers have voluntarily stopped using these cylinders in TIH gas services. The proposed regulation will reduce the risk to health and safety associated with TIH materials leaking through cracks in cylinders. RSPA proposes that this regulation be imposed on the effective date of this rule. After that date, cylinders made of 6351 alloy may not be filled and offered for transportation in TIH service. Cylinders filled prior to that date may be offered for transportation and transported to their ultimate destination and, when necessary, cylinders containing unused gas may be returned to the person who filled the cylinder.

Section 173.163

The requirements for nonmetric-marked cylinders containing hydrogen fluoride would be amended to require ultrasonic examination as the only authorized requalification method. This

proposal is based on the fact that the presence of moisture in a cylinder containing hydrogen fluoride causes rapid corrosion of the cylinder wall. Since removal of all moisture after hydrostatic testing is very difficult, the current requirements authorize only the external visual inspection in lieu of hydrostatic testing and internal visual inspection. At the time the requirement was last amended, no other alternative examination was available to reliably examine the cylinder without introducing moisture into the cylinder. An ultrasonic examination, to examine the internal sidewall for defects, can be performed without introducing moisture to the cylinder. This section also would be amended to include metric-marked cylinders for use in hydrogen fluoride service.

Section 173.192

The title of this section would be revised to reflect that requirements are applicable to Hazard Zone A gases. The restriction on aluminum cylinders by highway and rail would be extended beyond arsine and phosphine to include all Hazard Zone A gases. Paragraph (c) would be amended to authorize alternative leakage tests having an equivalent level of sensitivity as the current water bath leakage test, upon written approval from the Associate Administrator. Currently without exception, cylinders containing any amount of phosgene gas must be subjected to a water bath leakage test prior to offering them for transportation.

Section 173.198

An editorial change would be made to paragraph (a).

Section 173.226

Paragraph (a) would be revised to include only seamless specification cylinders conforming to all requirements of § 173.40. Currently, Division 6.1, Hazard Zone A materials may be shipped in any DOT specification cylinder except 8, 8AL and 39. RSPA believes that this must be corrected in order to require these high hazard materials to be transported in cylinders with a higher level of safety.

Section 173.227

Paragraph (a) would be revised to include only seamless and welded specification cylinders conforming to the requirements of § 173.40.

Section 173.228

Paragraph (a) would be amended to include metric-marked specification cylinders and to require that cylinders used for bromine pentafluoride and bromine trifluoride in Hazard Zones A and B materials must conform to § 173.40 as required for similar materials.

Sections 173.300a–173.300c

The provisions in these sections would be relocated to new Subpart I of Part 107 and §§ 173.300a, 173.300b and 173.300c would be removed.

Sections 173.301–173.301b

Current § 173.301 would be revised and proposed §§ 173.301a and 173.301b would be added. Section 173.301 would contain the general shipper requirements for the use of specification cylinders that are currently in § 173.34 and the standard requirements for cylinders that are currently in § 173.301. These requirements include general prefill requirements, maintenance and legibility of markings, PRD, valve protection, manifolding of cylinders and the charging of foreign cylinders. A derivation table showing the relocation of the requirements appears in Part X of this preamble.

Certain other changes would be made to § 173.301. The cargo tank manifolding requirements that are currently in § 173.301(d) would be removed and placed with other cargo tank requirements in § 173.315.

Proposed paragraph (a)(6) would prohibit the offering for transportation and transportation in commerce of a filled cylinder having a specified service life after its service life has expired. This requirement will ensure cylinders that may be unsafe are removed from service for transportation of hazardous materials.

Proposed paragraph (d) contains the general prohibition, that is currently contained in paragraph (a), against filling a cylinder with gases that are capable of combining chemically with each other or with the cylinder material so as to endanger its serviceability. This provision would be expanded to prohibit the use of DOT 3AL cylinders made of aluminum alloy 6351–T6 for gases having pyrophoric properties. Leaks of gases having pyrophoric properties, such as, silane, would cause spontaneous flame and pose a significant threat to the health and safety. A transition period of six months after the effective date of the final rule would be provided for cylinders filled prior to the specified date.

Proposed paragraph (f) contains PRD system and setting requirements. The general purpose of a hazardous material packaging is to prevent the unintentional release of a hazardous material under normal conditions of transportation, including mishandling and minor traffic accidents. Also, the packaging standards for cylinders are designed to prevent failure of a cylinder from over pressurization, particularly, when it retains substantial stored energy. Thus, a balance must be set between competing interests for keeping a hazardous material, particularly Division 2.1 and 2.3 gases and Division 2.2 gases with oxidizing properties, in a packaging and allowing such a material to escape in order to prevent the packaging from rupturing.

Under current regulations, the type and setting of PRD systems are established by CGA Pamphlet S–1.1. CGA Pamphlet S–1.1 allows a PRD setting to be 75% to 100% of test pressure of the cylinder. Based on RSPA's analysis of the currently authorized settings, a fully charged nonmetric-marked DOT–3 series gas cylinder at 130 °F operating temperature will likely release hazardous gases when the PRDs, conforming to the authorized tolerances on device function, are set below test pressure. RSPA believes this creates a serious threat to safety by allowing an improper balance between keeping the hazardous material in the package and preventing the cylinder from rupturing. In contrast, RSPA does not believe this condition applies to DOT–4 series cylinders because the ratio of test pressure to service pressure is 2:1 as compared to 1.67:1 for DOT–3 series cylinders.

To correct this condition, RSPA is proposing a PRD setting of 100% of the marked test pressure for metric-marked and nonmetric-marked DOT–3 series cylinders. To allow users sufficient time to change their nonmetric-marked cylinders to meet the new PRD setting requirement, RSPA is proposing that each cylinder be brought into compliance at the first requalification of the cylinder after the effective date of the final rule.

RSPA believes a setting of 100% of test pressure for a PRD is a reasonable balance between keeping a gas in a cylinder and preventing a cylinder from rupturing in the event of a fire or overfill. PRDs designed to release at not less than test pressure will eliminate the possibility of gas release through the relief device at a temperature less than or equal to 54 °C (130 °F). At the same condition, test pressure, the factor of safety for cylinder rupture is 1.6. As a result of discussions with gas shippers, RSPA believes many major shippers of DOT–3 series cylinders are currently setting PRDs at 90–100% of test pressure for toxic and flammable gases. Because it is common practice for many shippers of DOT–3 series cylinders to replace the PRD at the time of a

cylinder's requalification, RSPA believes the proposal will result in minimal incremental cost. For most gases, RSPA believes the increased PRD setting will not significantly impact the performance of cylinders in bonfire tests. RSPA requests the following:

1. Data on the performance of PRDs set at test pressure in bonfire tests.

2. Comments on any gases or cylinders where a 100% of test pressure setting could prevent a cylinder from passing a bonfire test.

3. Comments on the need to requalify PRDs in a bonfire test.

Proposed paragraph (h) would contain the cylinder valve protection requirements that are currently in paragraph (g). These requirements would be revised to require a performance-oriented approach to valve assembly protection. A six foot drop test would be required to verify that each cylinder valve (with or without protection assembly) has sufficient strength to survive falls incidental to handling in transportation. An acceptable drop test result would be that no leakage occurs after the cylinder is dropped, although the cylinder may show damage. A similar drop test is currently required for all non-bulk performance-oriented packagings to ensure that the packages can withstand normal conditions of transportation. RSPA believes that cylinders should be held to at least the same level of performance as drums and fiberboard boxes. A period of five years is proposed in paragraph (h)(1)(i) to provide a smooth transition to meet this performance requirement.

Proposed paragraph (k) would be added to permit foreign cylinders to be imported into the United States and transported within a single port area subject to certain conditions.

Proposed paragraph(m) would be added to prohibit cylinder attachments with sharp features that may cause damage to other freight. This new provision is in response to NTSB Recommendation I–92–001 with respect to cylinders. Attachments for other hazardous material packaging types will be addressed in a separate rulemaking action.

Proposed § 173.301a would contain the current requirements pertaining to the pressure in a nonmetric-marked cylinder at 70 °F and 130 °F. It would also contain a grandfather provision that is currently in § 173.34(b).

Proposed § 173.301b contains additional general requirements for metric-marked cylinders used for nonliquefied (permanent) gases. Definitions would be added for ''critical temperature,'' ''dissolved gas,'' ''filling factor of liquefied compressed gas,'' ''high pressure liquefied compressed gas,'' ''low pressure liquefied compressed gas,'' ''permanent (non-liquefied compressed) gas,'' ''safety factor,'' and ''settled pressure.'' These proposed definitions, which are used in ISO Standard 11622, will provide for harmonization with the international standards.

Sections 173.302–173.302b

Current § 173.302 would be revised and proposed §§ 173.302a and 173.302b would be added. Proposed § 173.302 prescribes the general requirements that would apply to filling a specification cylinder with a nonliquefied (permanent) compressed gas.

Proposed 173.302a prescribes requirements for filling a nonmetric-marked cylinder with a nonliquefied compressed gas, i.e., the current requirements in § 173.302. In addition, RSPA proposes to remove the 5/6 filling pressure limitation for DOT 3AL cylinders in carbon monoxide service, in response to a CGA petition (P–1082). CGA furnished information to support its conclusion that, although evidence shows that carbon monoxide can cause stress corrosion cracking in steel cylinders, there is no evidence that carbon monoxide causes corrosion cracking or carbonyl formation in aluminum cylinders.

Proposed § 173.302b prescribes requirements for filling a metric-marked cylinder with permanent gas. Because a metric-marked cylinder is stamped with the test pressure in bar, the fill pressure is calculated from the marked test pressure. The charge pressure for a metric-marked cylinder is 2/3 of the test pressure for seamless DOT 3M, 3FM and 3ALM cylinders, and 1/2 of the test pressure for welded DOT 4M cylinders. The NPRM proposes a uniform standard which reduces the possibility of overfilling and allows the gas industry to ship an additional 1.5% gas. Because the NPRM proposes that the cylinder be marked and charged in accordance with ISO Standard 11622, it would facilitate shipments of hazardous material in DOT specification cylinders internationally.

Section 173.304–173.304b

Current § 173.304 would be revised and proposed §§ 173.304a and 173.304b would be added. Proposed § 173.304 prescribes general requirements that would apply to filling a specification cylinder with a liquefied gas.

Proposed § 173.304a prescribes specific requirements for filling a nonmetric-marked cylinder with a liquefied gas, i.e., the requirements that are currently in § 173.304. Currently, § 173.304 limits the filling of a cylinder with a liquefied compressed gas based on the maximum expected operating temperature (130 °F) and the minimum specific gravity of the liquid at 60 °F. The maximum filling densities for many gases are prescribed in a table that would be retained in the HMR in § 173.304a for nonmetric-marked cylinders.

The current regulation defines a liquefied compressed gas to be partially liquid at an operating temperature of 20 °C (68 °F) and authorizes a filling limit based on a wide range of critical temperatures. Therefore, the safety factor derived from filling limits is conservative for some gases and marginal for other gases. In addition, the current regulations limit the internal volume of a DOT–39 specification cylinder to 75 cubic inches when used for liquefied petroleum gases. This requirement is revised to apply to all liquefied flammable gases and appears in proposed § 173.304a(a)(3). In proposed § 173.304b for metric-marked cylinders, filling limits are based on the maximum operating temperature and filling factor. Instead of a maximum filling density table, the proposed filling limits are based on a filling factor which is directly related to the critical temperature of the liquefied compressed gas. The proposed filling limits are applicable to all liquefied compressed gases. Under the proposed filling limits, the filling factor is defined based on the critical temperature and the operating condition of each individual gas. Therefore, the proposal enhances the level of safety and allows the gas industry to fill the cylinders with more product.

Section 173.334

This section would be amended to include metric-marked specification cylinders.

Section 173.336

This section would be amended to include metric-marked specification cylinders.

Section 173.337

This section would be amended to include metric-marked specification cylinders.

Part 177

§ 177.840 Class 2 (Gases) Materials

RSPA proposes to revise paragraph (a)(1) to allow horizontal loading of cylinders containing Class 2.2 materials. In addition, the horizontal loading of Class 2.1 and Class 2.3 materials would be permitted for cylinders designed so that the inlet to the PRD is located in the

vapor space and provided that the cylinders are properly secured during transportation.

This paragraph also would require the use of cylinder restraint systems to reduce the likelihood of the cylinders being ejected from the vehicle in event of an accident. This proposal is based on a NTSB Recommendation I–90–008, that urges RSPA to require hazardous materials packages to be secured with adequate cargo restraint systems to prevent their ejection from the vehicle during transportation. NTSB made the recommendation following an accident in Collier County, Florida that involved a number of cylinders, containing a poisonous by inhalation gas, being ejected from an overturned tractor-flatbed semitrailer. Considering the wide variation in cylinder sizes, and the various types of restraints that would be required, RSPA solicits information on anticipated safety benefits and the costs of requiring the use of restraint systems, particularly on small businesses.

Part 178

Section 178.46

As discussed in Part IX of this preamble, the tables in paragraph (b)(4) would be revised to remove aluminum alloy 6351 as an authorized material for the manufacture of DOT 3AL seamless cylinders. In addition, in Table 1, several changes would be made to the chemical composition limits for 6061 alloy for consistency with limits stated in The Aluminum Association Standards and Data, 1993 edition. The Si maximum that is currently stated as 0.80% would be revised to read 0.8%, the Fe maximum that is currently stated as 0.70% would be revised to read 0.7%, the Mg minimum that is currently stated as 0.80% would be revised to read 0.8%, and the Mg maximum that is currently stated as 1.20% would be revised to read 1.2%. Finally, Table 1 limits the chemical composition of Pb (lead) and Bi(bismuth) to 0.01. RSPA proposes to change these limits to 0.005.

Section 178.69

This new proposed section contains general design and manufacturing requirements applicable to all metric-marked DOT specification cylinders. This proposed section contains much of the same information as the current § 178.35, including compliance, inspection and analyses, duties of inspector, PRDs, and markings; however, proposed § 178.69 is extended to address definitions, authorized material, threads, and tests. Thus, § 178.69 would simplify the regulations in that all information common to metric-marked cylinders will be centrally located, and will allow the simplification and streamlining of the individual cylinder specifications proposed in §§ 178.71, 178.72, 178.73 and 178.81.

Paragraph (b) will define common terms for clarity and consistency. The addition of the new definition for ''volumetric expansion test'' will clarify RSPA's meaning of the many terms used by industry to describe pressure testing.

Paragraph (c) specifies the requirements for inspection and analyses. RSPA proposes that all DOT 4-series metric-marked cylinders have inspection and analyses performed by an independent inspection agency.

In paragraph (e), duties of the inspector, RSPA proposes a change to allow the inspector to obtain a certified cast or heat analysis from the cylinder manufacturer in addition to the material producer or supplier, as needed. The current regulations require the inspector to verify that the material of construction meets the requirements of the applicable specification by either making a chemical analysis of each heat of material; obtaining a certified chemical analysis from the material manufacturer for each heat of material; or by making a check analysis of a sample from each coil, sheet, or tube if an analysis is not provided by the material manufacturer for each heat of material. These alternative methods for verifying compliance are something raised by independent inspectors to require cylinder manufacturers to perform check analyses when readily available information may be used. The proposed regulation would allow cylinder manufacturers to use analyses obtained from the mill to verify the material conforms to standards for the cylinder specification.

Paragraph (f) specifies performance-oriented requirements for threads. These requirements would allow the manufacturer to design the threads in conformance with any appropriate standard as long as certain thread shear strength limits are met.

Paragraphs (h) and (i) list all tests that apply to metric-marked cylinders. A new approach for the metric-marked cylinders is the categorization of design qualification tests (paragraph (h) in addition to production tests in paragraph (i)). These paragraphs include criteria for each test as well as acceptance criteria. The individual cylinder specifications prescribe which tests in § 178.69 apply to each specification, as well as any unique test requirements or acceptable results. Centralizing all test information in one location reduces repetition in the regulations and reduces the likelihood of inconsistent requirements in the specifications. The requirement that new metric-marked cylinders have cycle testing performed during design qualification incorporates current industry practice. RSPA believes that the cycle test is an important design performance test that assesses cylinder fatigue life and, therefore also, proposes this requirement for welded cylinders.

Paragraph (i)(12) contains requirements for ultrasonic examination (UT); a non-destructive test method designed to detect surface and subsurface flaws and to measure the thickness of a cylinder and the size of a flaw or crack. The UT equipment has the capability to detect the presence of discontinuities on or even within the cylinder sidewall, shoulder, or bottom. UT would be required for all seamless and some welded metric-marked cylinders at the time of manufacture.

Paragraph (k) prescribes marking requirements. A significant change for the new metric-marked cylinders is marking with the test pressure, rather than service pressure, expressed in bar. To communicate vital information to requalifiers, metric-marked cylinders that require UT examination during requalification must be marked ''UT'' as well as with the minimum wall thickness. Other markings, such as country of origin, will be required for metric-marked cylinders; thereby making them more acceptable for transportation of hazardous materials in international commerce.

Paragraph (l) includes a prohibition on coatings that may interfere with inspections and tests, or that allow moisture to accumulate between the cylinder wall and the coating. This provision is RSPA's response to potential threats to safety associated with coating materials, such as vinyl, which promote corrosion.

Section 178.70

This proposed section groups the common requirements that apply to all DOT 3 series metric-marked seamless cylinders (DOT 3M, DOT 3ALM, and DOT 3FM).

Paragraph (c) specifies materials for 3 series cylinders. Authorized materials are located in Appendix A, Table 1 for steel and nickel and Table 2 for aluminum. The steel compositions authorized include two carbon manganese type, one chrome moly type steel, and one stainless steel type. The aluminum composition is a 6061 alloy. These compositions are broad enough to cover most material specifications currently in use.

Paragraph (e) specifies wall thickness requirements. The current DOT 3AAX requirement in § 178.37(a)(2)(i) that adresses additional design loads due to bending is proposed in this general section for all DOT 3-series metric-marked cylinders. The inclusion of this requirement sets a precedent in the HMR by allowing manufacturers the flexibility to adapt any metric-marked cylinder specification to a ''tube trailer'' type cylinder.

Section 178.71

This section proposes the new DOT 3M metric-marked cylinder specification. This specification combines aspects of the current DOT 3A, 3AX, 3AA, 3AAX, 3B, and 3BN specifications.

Proposed paragraph (c) authorizes construction using steel, stainless steel, and nickel. The carbon manganese composition authorized encompasses the steel currently used for DOT 3A specification cylinders. The inclusion of the stainless steel composition for a seamless cylinder will eliminate the need for many exemptions.

Section 178.72

This section proposes the new DOT 3ALM metric cylinder specification. This specification is very similar to the current DOT 3AL except that aluminum alloy 6351 is not authorized as a material of construction.

Section 178.73

This section proposes the new DOT 3FM metric-marked cylinder specification. The proposed DOT 3FM cylinder is designed to a high stress level similar to the DOT 3T, and incorporates the strong structural integrity of the DOT 3AA cylinder. This specification meets many of the requirements of the ISO Standard 9809–2 cylinder, which should make it readily acceptable in international commerce. The authorized materials of construction are Grade B, a chrome molybdenum type steel currently authorized for 3T cylinders and Grade E a new chrome molybdenum type steel. Steels such as Grade E with higher ultimate strength levels (above 115,000 psi) are currently authorized under exemption. Because the most critical failure mode is cracking, these cylinders will be subjected to UT examination at the time of manufacture and requalification.

Section 178.81

This section contains specific requirements for the proposed DOT 4M metric-marked cylinder specification. This specification combines aspects of the current DOT 4B, 4BA, 4BW, 4B240ET, 4E, 4D, 4DA, 4DS and 4AA480 specifications. The maximum design test pressure is 140 bar (2030 psi). This represents a pressure of more than double what is currently authorized for welded cylinders, except the DOT 4DA and 4DS specification, which have a maximum test pressure of 1800 psi. Authorized materials would include aluminum alloy 5154 currently used for the DOT 4E specification cylinder, as well as carbon, HSLA, stainless, and 4130X steels. For DOT 4M specification cylinders with a test pressure of 70 bar or more, the welds must be 100% radiographed to provide assurance of the joint quality. Manufacturers of DOT 4M specification cylinders would have the option of performing an ultrasonic examination in lieu of the radiographic examination.

RSPA solicits comments on the need for a higher performance welded cylinder specification than what is proposed in this NPRM. Comments are also requested as to whether such a higher performance specification should be distinguished from the lower performance by pressure, or by material strength, or some other performance standard. RSPA is currently considering a cylinder specification with a design test pressure of either more than 140 bar (2030 psi) or with an ultimate tensile strength of 830 Mpa (121,000 psi) or higher.

Part 180

Part 180, Subpart C

This new subpart would prescribe requirements for the continuing qualification, maintenance, repair and rebuilding of DOT specification and exemption cylinders. Most of the requirements are currently contained in §§ 173.34 and 173.301. Readers should refer to the references under Part X of this preamble for the citation of the corresponding provision that is similar to the current provision contained in the HMR. The proposed requirements include DOT metric-marked cylinders.

Section 180.203

This section contains definitions for terms used throughout Subpart C. Some of these definitions are ''commercially free of corrosive components,'' ''condemn,'' ''defect,'' ''rejected cylinder,'' and ''volumetric expansion test.''

Section 180.205

This section prescribes general requirements for the continuing qualification and use of cylinders and for each person performing a cylinder requalification function.

Section 180.207

This section prescribes requirements for the periodic requalification of metric-marked specification cylinders. Proposed Table I specifies the periodic requalification requirements. The standard requalification period is once every five years, with extended requalification periods provided for cylinders used exclusively to transport certain gases. For example, when used exclusively for noncorrosive, nontoxic (LC50 of not less than 5000 ppm) gases, DOT 3M, 3ALM, and 3FM specification cylinders must be requalified at least once every ten years. Similarly, a DOT 4M specification cylinder must be requalified at least once every 15 years. DOT 3M and 4M specification cylinders used exclusively as fire extinguishers and meeting the limitation of special provision 18 must be requalified at least once every twelve years, as currently required for nonmetric-marked DOT specification cylinders used as fire extinguishers.

All DOT 3M, 3ALM, 3FM and 4M specification cylinders must be requalified using the ultrasonic examination, instead of a volumetric expansion test. A DOT 4M specification cylinder, with a marked test pressure of 70 bar or less and having a tensile strength less than 830 Kpa (120,000 psi), may be subjected to a volumetric expansion test in lieu of an ultrasonic examination. Ultrasonic examination improves safety by automating the identification and measurement of wall thickness, pitting and cracking. It improves the probability of detection for internal pits and cracks over current internal visual inspection. Ultrasonic examination also reduces inspection and labor costs, cleaning costs and waste water by allowing cylinder requalification without removing the valve and purging the cylinder's contents, and without the deliberate introduction of water into the cylinder.

Comments are invited on the proposed requirements for ultrasonic examination of cylinders. RSPA also solicits information on industry practices in this area, the costs and benefits for using UT examinations and the pass/fail criteria in Table II.

Section 180.209

This section prescribes requirements that are currently contained in § 173.34(e) for the periodic requalification of nonmetric-marked specification cylinders. The current rule for the requalification of most DOT specification and exemption cylinders requires a volumetric expansion test, external and internal visual inspections

which are not suitable for detecting a buried or internal crack.

In proposed paragraph (a)(1), note 2 following the table requires detection and measurement of the sidewall cracks in DOT 3T and 3HT cylinders at each requalification period by an approved non-destructive test (NDT) method. Cracks in these cylinders can be detected by using a suitable NDT method, such as acoustic emissions or appropriate shear wave ultrasonic examination. Because the ultimate tensile strength (UTS) of DOT 3T and 3HT cylinders are above 7,900 Mpa (155,000 psi), crack growth due to stress corrosion and fatigue can occur during normal service. An undetected crack can grow to a critical size and result in a catastrophic failure. Manufacturers of specificition DOT 3T and other high strength exemption cylinders are required to perform UT examinations at the time of manufacture.

Proposed paragraph (a)(2) allows for nonmetric-marked specification cylinders to be ultrasonically examined as an alternative requalification method. An external visual inspection is required to be conducted in conjunction with the UT examination. The requalification period for nonmetric-marked cylinders is the same as required in Table I of this proposed section.

Section 180.211

This section prescribes repair, rebuild and heat treatment requirements currently prescribed in §§ 173.34(g) thru 173.34(l), with certain revisions. These requirements are standardized and simplified.

Section 180.213

This section contains marking requirements presently contained in § 173.34(e)(7), with certain revisions.

A new requirement for all specification cylinders would be added to identify the type of inspection, test, or work performed on a cylinder. This new requirement would enable shippers, carriers, and enforcement personnel to readily determine the type and date of each inspection or test, or whether any repair or rebuilding work has been performed on a cylinder.

The methods for marking cylinders would permit stamping, engraving, scribing or any other method approved in writing by the Associate Administrator for HMS. In response to a NPGA petition, RSPA also proposes allowing use of pressure sensitive labels to display the requalification markings on fire extinguishers. However, RSPA is also soliciting comments on whether there are any methods that should or should not be authorized for application of requalification markings. Currently, after a cylinder passes the requalification volumetric expansion test, internal and external visual examinations, etc., the RIN holder stamps the month and year of the test and its RIN on the cylinder. This marking is normally accomplished with steel stamps. However, RSPA has granted exemptions, such as E–11372, authorizing certain fire extinguishers and fiber-wrapped cylinders to display the requalification markings using labels. RSPA is considering whether to incorporate new marking methods for DOT specification cylinders following the requalification process.

RSPA requests comments on the feasibility, costs and benefits of alternative marking methods, and whether affected persons believe there is justification for RSPA to adopt alternative methods.

Section 180.215

This section contains the reporting and record retention requirements currently prescribed in § 173.34(e)(8), with certain revisions.

The retester authorization record requirements in current § 173.34(e)(8)(i) would be revised to include all cylinder requalifiers who inspect, test, repair, or rebuild cylinders. In addition, proposed paragraph (d)(1) requires that records covering any work involving welding or brazing repairs, or the building or reheat treatment of cylinders must be retained by the cylinder requalifier for 15 years. The requalifier would be required to retain inspection and test records until expiration of the inspection or requalification period or until the cylinder is again requalified, whichever occurs first. Records of any welding or brazing repair, rebuilding or reheat treatment would be required to be retained for 15 years.

XII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of public interest. A preliminary regulatory evaluation is available for review in the docket.

B. Regulatory Flexibility Impact

General

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. RSPA is unable, at this time, to certify that this proposed rule will not have a significant impact on a substantial number of small entities. RSPA has performed an Initial Regulatory Flexibility Analysis (IRFA) of this proposed rule's potential impact on small entities, and the assessment has been placed into the public docket for this rulemaking. Written public comments that clarify the degree of potential impacts on affected small entities are requested.

IRFA Summary

The Regulatory Flexibility Act is concerned with identifying the economic impact of regulatory actions on small businesses and other small entities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of ''small business'' has the same meaning as under the Small Business Act. As RSPA has established no special definition, the agency employs thresholds published under criteria in 13 CFR 121.101, e.g., 500 employees for cylinder manufacturers (SIC 3443—Fabricated Plate Work (Boiler Shops) and SIC 3462 Iron and Steel Forgings).

Need for the proposed rule. As indicated throughout the preamble to this proposed rule, current requirements for the manufacture, use, and requalification of cylinders can be traced to standards first applied in the early 1900's. The regulations were subsequently revised in a piecemeal fashion, with adjustments being made to address particular situations and problems on a case-by-case basis. This notice represents RSPA's first comprehensive review of requirements pertaining to the transportation of compressed gases in cylinders and spheres. This action is being taken to: (1) Simplify requirements for the production of new cylinders, (2) provide flexibility in the design, construction processes and permitted use of cylinders, (3) adopt advanced technological processes and procedures for cylinder manufacturing and requalification, (4) achieve an increased level of safety through simplification of the rules and regulations, (5) reduce the need to issue, and renew, exemptions

that permit variances from detailed specifications concerning materials of construction, design, and manufacturing processes, and (6) facilitate international commerce in the transportation of compressed gases.

Objectives and legal basis for the proposed rule. The intended effect of this action is to reduce threats to health, safety and property in the transportation of hazardous materials, particularly flammable, toxic and other compressed gases. Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.) directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. Section 5103(b) specifies that the regulations shall apply to persons transporting hazardous materials in commerce; causing hazardous materials to be transported in commerce; or manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or container that is represented, marked, certified, or sold by such persons as qualified for use in transporting hazardous material in commerce.

Identification of potentially affected small entities. 1. Businesses likely to be most affected by this proposed rule are manufacturers of specification DOT–3 and DOT–4 series cylinders (SIC 3443 and SIC 3462). Currently, RSPA estimates there are 40 manufacturers of specification DOT–3 and DOT–4 series cylinders. Of that number, approximately 29 are ''small businesses'' under the Small Business Act.

In the case of approximately eleven (11) manufacturers (five (5) of whom are small businesses) of high-pressure (specification DOT–3 series) cylinders there should be little or no burden attributed to requirements contained in this proposed rule, as many of these new processes and technological innovations have already been adopted as part of their own quality management program.

In addition to the above, there are another twenty-nine (29) cylinder manufacturers (twenty-four (24) of whom are small businesses) identified in RSPA's database of registered markings for packaging manufacturers, and/or holders of exemptions that authorize the manufacture, marking, and sale of cylinders that do not fully conform to specifications for the DOT–3 and DOT–4 series. Eight (8) of these cylinder manufacturers (including five (5) that meet the criterion of a small business) are members of the Compressed Gas Association (CGA), one of the primary initiators of petitions for rulemaking to revise the HMR for greater consistency with regulations of the world's leading industrial nations. It is RSPA's understanding that all CGA members support proposed revisions contained in the CGA petitions. However, that leaves another twenty-one (21) non-CGA-member cylinder manufacturers, of which RSPA assumes at least 90% (approximately nineteen (19)) meet the SBA criterion for a small business, that would be affected by the proposed rule.

Some small entities may experience an adverse economic impact attributed to the proposed rule's prohibition on the manufacture of non-metric-marked specification DOT–3 and DOT–4 series cylinders after a future date (five years from the effective date of a final rule). Prior to that date, small entities would, at their own discretion, be permitted to manufacture (1) non-metric-marked cylinders only, (2) metric-marked cylinders only, or (3) a combination of non-metric-marked cylinders and metric-marked cylinders. However, after the phase-out date, these small entities may manufacture DOT–3 and DOT–4 cylinders conforming to metric-marked specifications only.

RSPA anticipates that, upon review of these proposed requirements, some small entities currently producing specification DOT–3 or DOT–4 series cylinders may determine that it is not economically feasible to continue this line of products. For example, RSPA estimates the average annual cost of the proposed requirement for an independent inspection agency to observe cylinder manufacturing operations and processes at $59,286 per facility. However, that average is calculated on the basis of a wide range of costs for individual facilities that produce specification DOT–4 series cylinders (e.g., $5,000 for an occasional production run to $100,000 for a manufacturer that operates a dedicated line). For manufacturers that produce a relatively large volume of these cylinders the CGA estimates the additional cost of manufacturing attributed to this provision will be an additional 10¢ per cylinder. For a completed 20-pound propane cylinder that currently sells for approximately $25 (retail price), RSPA expects that the added expense would not be prohibitively costly to the manufacturer or to the ultimate consumer.

RSPA understands that the production of specification DOT–3 and DOT–4 cylinders by some manufacturers that are small businesses oftentimes is but one of a wide-range of pressure vessels, or other products, in the company's product line. Knowing the importance of specification DOT–3 and DOT–4 series cylinders to the viability of these small entities, is critical to RSPA's determination of whether this rule may have a significant economic impact on a substantial number of small manufacturing companies. Small entities are, therefore, specifically invited to provide comments on the economic impact of the proposed rule on their overall operations.

2. In addition to cylinder manufacturers, there are approximately 1,400 businesses currently engaged in the periodic requalification of high-pressure cylinders. Here, also, RSPA conservatively estimates that at least 90 percent of these requalifiers are small businesses. This number includes businesses that manage large fleets of cylinders, such as cylinders charged with propane to power forklift trucks, and for use by retail customers through cylinder exchange programs. Still other companies, generally thought to fall within SIC 7389 (business services, not elsewhere classified), manage fleets of cylinders used in (1) carbon dioxide service for carbonated soft drinks, (2) fire extinguisher service, and (3) compressed air/oxygen breathing equipment used in recreational diving operations, as well as by emergency services personnel, like firefighters. All of these businesses are currently approved to requalify cylinders through performance of the hydrostatic pressure test.

The proposed rule would require each business to determine whether it should: (1) upgrade test equipment from the hydrostatic type to ultrasonic examination type to be able to service the older DOT specification cylinders and the new metric-marked cylinders, or (2) continue to maintain its currently installed hydrostatic test equipment and service only the older DOT specification cylinders (estimated to now number 300 million, a majority of which may be expected to remain in service well into the next century) and the proposed DOT–4M metric-marked cylinder that have a marked test pressure of ≤70 bar.

RSPA anticipates that some small entities currently performing requalification functions by the hydrostatic pressure test method may determine that investments in new ultrasonic test equipment (requiring an investment currently estimated at $50-$80 thousand amortized over a period of ten (10) years) may not be economically feasible, considering the comparatively small number of metric-marked cylinders (vs. the current size of the domestic fleet of approximately 300

million cylinders) that will be produced beginning perhaps as early as 1999, and first requiring periodic requalification in 2004. Currently, five (5) of the eighteen (18) retester facilities currently performing requalification of cylinders by ultrasonic examination, rather than by hydrostatic pressure testing, under terms of special exemptions issued by RSPA are thought to meet the criterion for a small business.

Although the ultrasonic examination method initially involves a large capital investment, it offers cost savings for businesses that own and/or use cylinders for the transportation of compressed gases. In addition, ultrasonic examination provides (1) substantial benefits for increased safety, (2) opportunities for reducing emissions of hazardous materials to the environment, and (3) reduced contamination of cylinders.

Commenters are specifically invited to provide additional information with respect to this proposed requirement for ultrasonic testing of metric-marked cylinders and its potential impact on small entities. RSPA requests comments from affected small entities regarding the potential adverse impact this proposed rule may have on their cylinder requalification operations specifically, and the overall viability of their enterprise should they determine it would be economically prohibitive to continue to perform cylinder requalification services.

3. Finally, there are literally hundreds of thousands of commercial establishments that own and use cylinders manufactured to specifications in the DOT–3 and DOT–4 series. Those business sectors include agriculture; mining; construction; manufacturing; transportation, communications, electric, gas and sanitary services; wholesale trade; retail trade; services; and many other nonclassifiable establishments. On the basis of a Small Business Administration estimate that of the 24 million businesses located in the U.S. only 15,000 (.000625%) are large firms, RSPA concedes it is likely that over 99% of the businesses that make use of compressed gases in DOT specification cylinders are small businesses. (Source: SBA Office of Advocacy, Small Business Answer Card 1998).

RSPA believes the proposed rules will generally have a small individual, though significant in the aggregate (i.e., $10 million annually), positive benefit for all of these businesses by making the metric-marked cylinders they buy or lease acceptable for trade and use in worldwide commerce. In addition, those cylinders will be allowed to be charged with a wider range of compressed gases and other materials, and, in many cases, the period between periodic requalification will be extended by several years, thereby resulting in cost savings attributed to less frequent inspections. For example, in the case of a specification DOT–3AL aluminum cylinder, the 5 year retest cycle would be extended to 10 years for the specification DOT–3ALM. In time, there may be as many as 1 million such cylinders in carbon dioxide service for the carbonated beverage industry alone. A single retest of this fleet of cylinders over a ten-year period vs. the current five-year period, at an average cost of $10 per cylinder, i.e., $10 million, would result in aggregate savings to the cylinder owners of $1 million per year. In the very competitive soft-drink industry, RSPA believes that the cost savings would be shared broadly.

To the extent that RSPA has failed to recognize potential impacts on the general universe of small entities that own or use cylinders, commenters are invited to identify those impacts and the magnitude of their affect on small entities.

Reporting and recordkeeping requirements. This proposed rule contains one new requirement for reporting and recordkeeping. Specifically, persons who requalify cylinders by a visual inspection, as currently authorized by § 173.34(e)(13), would, under proposed § 180.209(g), be required to first obtain a requalification identification number (RIN) from RSPA's Associate Administrator for Hazardous Materials Safety under provisions of proposed § 107.805. Essential elements of the application for approval include: (1) the name and address of the facility manager, (2) identification of the DOT specification/exemption cylinders that will be inspected at the facility, and (3) a signed and dated certification by the applicant that the facility will operate in compliance with applicable requirements of the HMR, and that the hazmat employees performing inspections have been properly trained, to include familiarization with the appropriate CGA C–6 series pamphlets concerning the conduct of visual inspections.

An approval, if issued by the Associate Administrator for Hazardous Materials Safety, would be effective for a maximum of five years, at which time the approval holder would have to file a new application for approval. Other than the requirements for having to file an application for approval, and entering the four-digit RIN (in addition to the month, year and letter ''E'' currently required) on each cylinder requalified by the visual inspection method, there is no additional regulatory burden associated with this proposal.

While the actual number of facilities currently operating under the exception provided by § 173.34(e)(13) is unknown, RSPA assumes, on the basis of data compiled by the Bureau of the Census, that the actual number is not more than 6,691, of which 5,651 are retail dealers of bottled liquefied petroleum gases (SIC Code 5984), 968 are merchant wholesalers of industrial gases, except liquefied petroleum gases (SIC Code 5169), and 72 are entities identified as EPA-approved reclaimers of refrigerant gases.

On a per facility basis, RSPA estimates the cost of this reporting and recordkeeping requirement would be $122.50 per five-year cycle. This estimate was calculated on the basis of cost data submitted by RSPA to the Office of Management and Budget in support of an approval issued by OMB (2137–0022) concerning Testing, Inspection and Marking Requirements for Cylinders. RSPA does not see this proposed regulatory requirement as inhibiting the ability of currently excepted retesters to continue to provide this cylinder requalification service to an extent that it threatens the viability of their primary business, *i.e.*, the sale of compressed gases in relatively small units. RSPA specifically invites commenters to provide data that supports or refutes this estimate of the costs of compliance with the new requirement to obtain a retester (requalification) identification number and its impact on small businesses currently authorized to perform this requalification function without first having to obtain an approval from the Associate Administrator for Hazardous Materials Safety.

Related Federal rules and regulations. With respect to the production, permitted use, and periodic requalification of cylinders used in the transportation in commerce of compressed gases, there are no related rules and regulations issued by other departments or agencies of the Federal government.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards, when possible, for small business, while still meeting objectives of the applicable regulatory statutes. In the case of manufacture, use, inspection, testing, retesting and requalification of DOT specification cylinders in compressed gas service, RSPA believes

that it is not possible to establish such differing standards and still accomplish the objectives of Federal hazardous materials transportation law (49 U.S.C. 5101–5127). RSPA further believes that the discussion in this NPRM as to the need for regulatory action, issues raised by many of the affected parties through petitions for rulemaking, applications for exemption, and otherwise, effectively requires RSPA to apply one set of requirements applicable to small and large businesses alike.

While certain regulatory actions may affect the competitive situation of an industry by imposing relatively greater burdens on small-scale than on large-scale enterprises, RSPA does not believe that this will be the case with the proposed rule. The principal types of compliance expenditure effectively required by the proposed rule would be imposed on each cylinder represented through its specification markings as conforming to a DOT specification, whether manufactured by, used by, or serviced by a large or a small business. There are administrative efficiency advantages, and economies of scale, available to a large firm, but the requirements considered in this rulemaking are intended to assure a minimum level of safety for packagings used to contain hazardous materials that pose high-order risks in transportation. Thus, no provisions may be waived simply on the basis that they would be burdensome to a small business.

At the same time, RSPA notes that the proposed rules were developed under the assumption that small businesses comprise an overwhelming majority of entities that would be compelled to comply, particularly regarding permitted use of cylinders and their periodic requalification for continued use. For that reason, in its development of the proposed rules, RSPA considered each requirement and determined this set represents the minimal requirements necessary for it to be able to assure an adequate level of safety in transportation.

For example, as an accommodation to small businesses, RSPA proposes to (1) permit facilities to continue to use their currently installed hydrostatic pressure test equipment to retest non-metric marked specification cylinders, millions of which have been in service for several decades and may be expected to continue in service for many more decades, and (2) permit the requalification of certain metric-marked cylinders, i.e., specification DOT–4M with a marked test pressure ≤70 bar.

Section 610 Review

Pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. § 610), RSPA has conducted a review of current requirements for the manufacture, use, and requalification of cylinders. The purpose of this review was to identify regulations that have a significant economic impact on a substantial number of small entities and to revise those regulations, where appropriate. In proposing revisions to the existing regulations, RSPA has attempted to minimize the economic impact on small business entities. It has done this, in part, by proposing to reduce from fifteen to four the number of authorized DOT–3 and DOT–4 series cylinder specifications, allowing greater fill limits for metric-marked cylinders, and extending the time between periodic requalification of metric-marked cylinders. Also, small business, such as boiler shops (SIC 3443), iron and steel forging shops (SIC 3462), merchant wholesalers of industrial gases, except liquefied petroleum gas (LPG) (SIC 5169), retail dealers of LPG (SIC 5984), and business services, not elsewhere classified (SIC 7389), will benefit from the greater safety provided by this proposed rule. RSPA encourages small entities to comment on the economic impact of proposals contained in this NPRM.

First, RSPA examined whether there is a continuing need for its cylinder regulations. Based on the various characteristics of compressed gases (e.g., flammability and toxicity) and the associated risks that are involved in the transportation of gases, RSPA recognizes that there is a continuing need for its cylinder regulations. However, as discussed previously in this preamble, RSPA is in receipt of numerous petitions for rulemaking concerning the cylinder regulations. Many of these petitions propose that RSPA incorporate accepted industry practices and new technology (e.g., new marking methods). RSPA has accepted many of these petitions and is proposing to incorporate new technology where the new technology achieves an equivalent or higher level of safety (e.g., ultrasonic testing). RSPA also reviewed exemptions issued under 49 CFR Part 107 and has incorporated those exemption provisions that have achieved a proven safety record.

In addition to the above, over the years, the regulated community has requested that RSPA reduce the complexity of its cylinder regulations. RSPA addressed these concerns by modifying the language used in the proposed rule, including a definition section and changing the organizational structure of the cylinder regulations. RSPA also recognizes that market conditions have changed dramatically since many of the existing rules were first adopted. Today, cylinders are manufactured, used, and transported to, from, and between entities in the global marketplace. In recognition of that worldwide sale and distribution of compressed gases in cylinders, RSPA is proposing to revise the HMR in a manner that is harmonious with international standards (e.g., metric-marked cylinders).

RSPA is confident that the proposed rule and existing cylinder regulations do not duplicate or conflict with other Federal rules. In addition, conflicts with state or local regulations are expressly provided for in Federal hazardous materials transportation law (49 U.S.C. § 5125). Under this statutory authority, RSPA issues preemption determinations as to whether a State, political subdivision, or Indian tribe regulation or law, governing the transportation of hazardous materials, is preempted under Federal law (*see* 49 C.F.R. Part 107, Subpart C).

C. Executive Orders 12612 and 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Orders 12612 (''Federalism'') and 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed regulation would have no substantial direct effect on the States or the relationship, or the distribution of power and responsibilities, between the Federal Government and the States, RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. Because this rule would not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

Federal hazardous material transportation law contains express preemption provisions at 49 U.S.C. 5125 that preempt State, local, and Indian tribe requirements if——

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and Federal hazardous material transportation law or regulations is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or regulations; or

(3) The requirement of the State, political subdivision, or Indian tribe concerns any of the following ''covered subjects'' and is not substantially the same as a provision of Federal hazardous material transportation law or regulations:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacture, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns the packing and handling of hazardous materials, and the design, manufacture, fabrication, marking, maintenance, and testing of cylinders that are marked and certified as qualified for use in the transportation of hazardous materials. If so adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantially the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA requests comments on what the effective date of the Federal preemption should be for the requirements in this proposed rule that concern covered subjects.

D. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

Under regulations implementing the Paperwork Reduction Act of 1995, '' * * * an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.'' 5 CFR 1320.8(b)(iii)(6).

The information collection and recordkeeping requirements in current §§ 173.34, 173.302(c) and 178.35 pertaining to records prepared by persons performing the requalification, repair, rebuild and use of cylinders and requirements in current § 173.34 pertaining to persons seeking approval to requalify cylinders, were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0022, with an expiration date of August 31, 1999. This information is used to verify that cylinders meet the required manufacturing standards prior to being authorized for initial use, and that once manufactured, the cylinders are maintained and used in compliance with applicable requirements of the HMR as packagings for hazardous materials. In this proposed rule, these information collection and recordkeeping requirements for records are revised and are in §§ 178.35, 178.69(e)(13), 180.205, 180.209, 180.211, 180.213, and 180.215.

The information and recordkeeping requirements in current §§ 173.300a and 173.300b for persons seeking approval to be an independent inspection agency, and for chemical analyses and tests of DOT specification and exemption cylinders conducted outside of the United States, were approved by OMB and assigned control number 2137–0557, with an expiration date of July 31, 1999. The information is used to evaluate an applicant's qualification to perform the applicable packaging functions and to ensure material of construction used in cylinders made outside the United States are in accordance with the applicable requirements. In this proposed rule, the information collection and recordkeeping requirements are in §§ 107.803, 107.805, 107.807 and 180.205(c). The information collection and recordkeeping requirements for persons seeking approval as cylinder requalifiers and approval to change a cylinder's service pressure are removed from OMB control number 2137–0022 and being placed with the other approval requirements under OMB control number 2137–0557. OMB control number 2137–0557 includes information and recordkeeping requirements for other than cylinders. The estimates contained in this proposed rule address only the cylinder provisions.

Because this proposed rule would establish certain new cylinder specifications, broaden the approval requirements for affected persons who requalify cylinders, and would relocate the cylinder requalification requirements to other sections, revisions would be made to the current burden hour submission. RSPA has revised the burden estimates based on the proposal in this NPRM and will submit revised burden estimates to OMB.

OMB Control Number 2137–0022

Affected Public: Cylinder requalifiers, repairers and rebuilders, and owners of certain DOT specification and exemption cylinders.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 500.

Total Annual Responses: 5,000.

Total Annual Burden Hours: 1,729.

Total Annual Cost for Development and Maintenance: $42,683.

OMB Control Number 2137–0557

Affected Public: Cylinder manufacturers, requalifiers, and persons seeking to change a cylinder's service pressure.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 2,027.

Total Annual Responses: 2,027.

Total Annual Burden Hours: 2,628.

Total Annual Cost for Development and Maintenance: $294,544.

RSPA invites comments on these revised information collection estimates, including any paperwork burdens not already considered. Requests for a copy of these information collections should be directed to Deborah Boothe, Office of Hazardous Materials Standards, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone (202) 366–8553 or 1–800–467–4922. Written comments should be received by the close of the comment period indentified in the **DATES** section of this rulemaking and should be addressed to the Dockets Management System as identified in the **ADDRESSES** section of this rulemaking. Comments must reference the docket number, RSPA 98–3684 (HM–220).

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading

of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, Chapter I, Subchapters A and C of the Code of Federal Regulations, are proposed to be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

§ 107.3 [Amended]

2. In § 107.3, the definition of ''Registration'' would be amended by removing the wording ''registration with RSPA as a cylinder retester pursuant to 49 CFR 173.34(e)(1), or''.

3. Subpart I would be added to Part 107 to read as follows:

Subpart I—Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders

Sec.

Subpart I—Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders

§ 107.801 Purpose and scope.

(a) This subpart prescribes procedures for—

(1) A person who seeks approval to be an independent inspection agency to perform cylinder inspections and verifications required by parts 178 and 180 of this chapter;

(2) A person who seeks approval to engage in the requalification (i.e., inspection, testing or certification), rebuild or repair of a cylinder manufactured in accordance with a DOT specification under subchapter C of this chapter or under the terms of an exemption issued under this part;

(3) A person who seeks approval to perform the manufacturing chemical analyses and tests of DOT specification or exemption cylinders outside the United States.

(b) No person may engage in a function identified in paragraph (a) of this section unless approved by the Associate Administrator in accordance with the provisions of this subpart. Each person shall comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart.

§ 107.803 Approval of independent inspection agency.

(a) *General.* Prior to performing cylinder inspections and verifications required by parts 178 and 180 of this chapter, a person must apply to the Associate Administrator for an approval as an independent inspection agency. A person approved as an independent inspection agency is not a RSPA agent or representative.

(b) *Criteria.* No applicant for approval as an independent inspection agency may be engaged in the manufacture of cylinders for use in the transportation of hazardous materials, or be directly or indirectly controlled by, or have a financial involvement with, any entity that manufactures cylinders for use in the transportation of hazardous materials, except for providing services as an independent inspector.

(c) *Application information.* Each applicant must submit an application in conformance with § 107.705 that must contain the information prescribed in § 107.705(a). In addition, the application must contain the following information:

(1) Name and address of each manufacturing facility where tests and inspections are to be performed and a detailed description of the inspection and testing facilities to be used by the applicant and the applicant's ability to perform the inspections and to verify the inspections required by part 178 of this chapter or under the terms of an exemption issued under this part.

(2) Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant.

(3) Name of each individual whom the applicant proposes to employ as an inspector and will be responsible for certifying inspection and test results and a statement of that person's qualifications.

(4) An identification or qualification number assigned to each inspector who is supervised by a certifying inspector identified in (c)(3) of this section.

(5) A statement that the applicant will perform its functions independent of the manufacturers and owners of the cylinders.

(6) If the applicant's principal place of business is in a country other than the United States—

(i) A copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought; and

(ii) A statement from the Competent Authority of that country stating that similar authority is delegated to other Independent Inspection Agencies who are approved under this subpart and that no condition or limitation will be imposed upon United States citizens or organizations that is not required of its own citizenry.

(7) The date and signature of the person certifying the approval application

(d) *Facility inspection.* Upon the request of the Associate Administrator, the applicant shall allow the Associate Administrator or the Associate Administrator's designee to inspect the applicant's facilities and records. The person seeking approval must bear the cost of RSPA's inspection.

§ 107.805 Approval of cylinder requalifiers.

(a) *General.* A person must meet the requirements of this section to be approved to inspect, test, certify, repair, or rebuild a cylinder in accordance with a DOT specification under subpart C of part 178 or subpart C of part 180 of this chapter or under the terms of an exemption issued under this part.

(b) Each applicant must arrange for an independent inspection agency, approved by the Associate Administrator pursuant to this subpart, to perform a review of its inspection or requalification operation. The person seeking approval must bear the cost of the inspection. A list of approved independent inspection agencies is available from the Associate Administrator at the address listed in § 107.705. Assistance in obtaining an approval may be requested from the same address.

(c) *Application for approval.* If the inspection performed by an independent inspection agency is completed with satisfactory results, the applicant must submit a letter of recommendation from the independent inspection agency, an inspection report, and an application that must contain the information prescribed in § 107.705(a). In addition, the application must contain the following information: the name of the facility manager; the DOT specification/exemption cylinders that will be inspected, tested, repaired, or rebuilt at the facility; a certification that the facility will operate in compliance with the applicable requirements of subchapter C of this chapter; and the date and the signature of the person making the certification.

(d) *Issuance of requalifier identification number (RIN).* The Associate Administrator issues a RIN as evidence of approval to requalify DOT specification/exemption cylinders if it is determined, based on the applicant's submission and other available information, that the applicant's qualifications and, when applicable, facility are adequate to perform the requested functions in accordance with the criteria prescribed in subpart C of part 180 of this chapter.

(e) *Expiration of RIN.* Unless otherwise provided in the issuance letter, an approval expires five years from the date of issuance, provided that the applicant's facility and qualifications are maintained at or above the level observed at the time of inspection by the independent inspection agency, or at the date of the certification in the application for approval, for facilities only performing inspections made under § 180.209(g) of this chapter.

(f) *Exceptions.* Notwithstanding requirements in paragraphs (b) and (c) of this section, a person who only performs inspections in accordance with § 180.209(g) of this chapter must submit a request which, in addition to the information prescribed in § 107.705(a) contains; the facility manager for each location in which requalifications would be performed; the DOT specification/exemption cylinders that will be inspected at the facility; a certification that the facility will operate in compliance with the applicable requirements of subchapter C of this chapter; a certification that the persons performing inspections have been trained and have the information contained in each applicable CGA pamphlet incorporated by reference in § 171.7 of this chapter that applies to the requalifiers activities; and the date and the signature of the person making the certification. Each person shall comply with the applicable requirements in this subpart. In addition, the procedural requirements in subpart H of this part apply to the filing, processing and termination of an approval issued under this subpart.

§ 107.807 Approval of non-domestic chemical analyses and tests.

(a) *General.* A person who seeks to manufacture DOT specification or exemption cylinders outside the United States must seek an approval from the Associate Administrator to perform the chemical analyses and tests of those cylinders outside the United States.

(b) *Application for approval.* Each applicant must submit an application that must contain the information prescribed in § 107.705(a). In addition, the application must contain the following information: the name, address and a description of each facility at which cylinders are to be manufactured and chemical analyses and tests are to be performed; complete details concerning the dimension, materials of construction, wall thickness, water capacity, shape, type of joints, location and size of openings and other pertinent physical characteristics of each specification or exemption cylinder for which approval is being requested, including calculations for cylinder wall stress and wall thickness which may be shown on a drawing or on separate sheets attached to a descriptive drawing; the name of the independent inspection agency to be used; and the date and the signature of the person making the certification.

(c) *Facility inspections.* Upon the request of the Associate Administrator, the applicant shall allow the Associate Administrator for HMS or the Associate Administrator's designee to inspect the applicant's cylinder manufacturing and testing facilities and records, and must provide such materials and cylinders for analyses and tests as the Associate Administrator may specify. The applicant or holder shall bear the cost of the initial and subsequent inspections, analyses, and tests.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.2 [Amended]

5. In § 171.2, paragraph (d)(3) would be amended by removing the wording ''retest or exemption markings'' and adding in its place the wording ''retest, exemption or requalification identification number (RIN) markings''.

6. In § 171.7, in the table in paragraph (a)(3), new entries would be added in alphanumeric sequence to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Nondestructive Testing, PO Box 28518, 1711 Arlingate Lane, Columbus, OH 43228–0518	
ASNT Recommended Practice SNT–TC–1A, 1992	Part 178, subpart C, Appendix B.
* * * * * * *	
American Society for Testing and Materials	

Source and name of material	49 CFR reference
* * * * *	* *
ASTM B 221–96 Standard Specification for Aluminum and Aluminum-Alloy Extruded Bars, Rods, Wire, Profiles, and Tubes.	178.46(a)(4), Table 2.
ASTM B 221M–96 Standard Specification for Aluminum and Aluminum-Alloy Extruded Bars, Rods, Wire, Profiles, and Tubes.	Part 178, Subpart C, Appendix A, Table 2, Aluminum.
* * * * *	* *
ASTM E 10–96 Standard Test Method for Brinell Hardness of Metallic Materials	178.69.
ASTM E 18–94 Standard Test Methods for Rockwell Hardness and Rockwell Superficial Hardness of Metallic Materials.	178.70.
* * * * *	* *
ASTM E 165–95 Standard Test Method for Liquid Penetrant Examination	178.69.
ASTM E 213–93 Standard Practice for Ultrasonic Examination of Metal Pipe and Tubing	178.71; 178.72; 178.73; Part 178, Subpart C, Appendix B; 180.215.
* * * * *	* *
ASTM E 399–90e1 Standard Test Method for Plane-Strain Fracture Toughness of Metallic Materials.	178.73.
* * * * *	* *
ASTM E 709–95 Standard Guide for Magnetic Particle Examination	178.69.
ASTM E 797–95 Standard Practice for Measuring Thickness by Manual Ultrasonic Pulse-Echo Straight-Beam Method.	Part 178, Subpart C, Appendix B; 180.215.
* * * * *	* *
Compressed Gas Association, Inc.	
* * * * *	* *
CGA Pamphlet C–1, Methods for Hydrostatic Testing of Compressed Gas Cylinders, 1996	178.69; 178.81; 180.205.
* * * * *	* *
CGA Pamphlet P–20, Standard for the Classification of Toxic Gas Mixtures, 1995	173.115.
* * * * *	* *
CGA Pamphlet S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996.	173.301.
* * * * *	* *

§ 171.7 [Amended]

7. In addition, in § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. In the entry ASTM A240/A240M–94b, the wording ''A240M–94b'' would be revised to read ''A240M–96a.''

b. The entry ASTM A 388–67 would be removed.

c. In the entry ASTM B 557–84, in column 2, the reference ''178.69;'' would be added, in numeric order.

d. In the entry ASTM E 8–89, the wording ''E 8–89'' would be revised to read ''E 8–96a'' and in column 2, the references ''178.36; 178.37; 178.38; 178.39;'', ''178.45;'', ''178.50; 178.51;'', ''178.55;'', ''178.61;'', and ''178.68;'' would be removed and ''178.69;'' would be added, in numerical order.

e. In the entry ASTM E 23–60, in column 1, the wording ''E 23–60'' would be revised to read ''E 23–96'' and in column 2, the reference ''178.69;'' would be added, in numeric order.

f. In the entry ASTM E 112–88, the wording ''E 112–88'' would be revised to read ''E 112–96'' and in column 2, the reference '';178.69'' would be added, in numeric order.

g. In the entry ASTM E 290–92, in column 2, the references '';178.69; 178.72'' would be added, in numeric order.

h. In the entry CGA Pamphlet C–3, the year ''1975'' would be revised to read ''1994'' and in column 2, the references ''178.50; 178.51;'', ''178.54;'', ''178.61;'', ''178.68'' would be removed and ''178.69;'', ''178.81;'', ''180.211'' would be added, in numeric order.

i. In the entry CGA Pamphlet C–5, in column 2, the reference ''173.302'' would be removed and ''173.302a'' would be added, in its place.

j. In the entry CGA Pamphlet C–6, in column 2, the reference ''173.34; 180.519'' would be removed and the references ''173.198; 180.205; 180.209; 180.211.'' would be added, in its place.

k. In the entry CGA Pamphlet C–6.1, in column 2, the reference ''173.34'' would be removed and the references ''180.205; 180.209'' would be added, in its place.

l. In the entry CGA Pamphlet C–6.2, in column 2, the reference ''173.34'' would be removed and the reference ''180.205'' would be added, in its place.

m. In the entry CGA Pamphlet C–6.3, in column 2, the reference ''173.34'' would be removed and the references ''180.205; 180.209'' would be added, in its place.

n. In the entry CGA Pamphlet C–8, in column 2, the reference ''173.34'' would be removed and the reference ''180.205'' would be added, in its place.

o. In the entry CGA Pamphlet C–11, in column 2, the reference ''178.35'' would be removed and the references ''178.35; 178.69'' would be added, in its place.

p. In the entry CGA Pamphlet C–12, in column 2, the reference ''173.34;'' would be removed and the references 173.301;'' and '';180.205'' would be added, in numeric order.

q. In the entry CGA Pamphlet C–13, in column 2, the reference ''173.34;'' would be removed and the references '';180.205;'', and ''180.209.'' would be added, in numeric order.

r. In the entry CGA Pamphlet C–14, in column 2, the reference ''173.34'' would

be removed and the reference ''173.301'' would be added, in its place.

s. In the entry CGA Pamphlet S–1.1, in column 2, the reference ''173.34'' would be removed and the references ''173.301; 173.304a.'' would be added, in its place.

8. In § 171.8, definitions for ''Metric-marked cylinder'' and ''Nonmetric-marked cylinder'' would be added, in alphabetical order, to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Metric-marked cylinder means a cylinder manufactured to the DOT 3M, 3ALM, 3FM or 4M specification prescribed in §§ 178.69 through 178.81 of this subchapter.

* * * * *

Nonmetric-marked cylinder means a cylinder manufactured to a DOT specification prescribed in §§ 178.35 through 178.68 of this subchapter that was in effect on [DATE PRIOR TO EFFECTIVE DATE OF THE FINAL RULE].

* * * * *

§ 171.8 [Amended]

9. In addition, in § 171.8, in the definition of ''Filling density'', paragraph (1) would be amended by revising the reference ''§ 173.304(a)(2)Table Note 1'' to read ''§ 173.304a(a)(2) Table Note 1''.

10. In § 171.12, paragraph (b)(15) would be revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(15) Cylinders not manufactured to a DOT specification must conform to the requirements of § 173.301(j) through (l) of this subchapter or, for Canadian manufactured cylinders, to the requirements of § 171.12a(b)(13).

* * * * *

11. In § 171.12a, in paragraph (b)(13) a new sentence would be added at the end of the paragraph, and paragraphs (b)(13)(i) through (b)(13)(v) would be added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(13) * * * However, a cylinder made in Canada that meets the following conditions is authorized for the transportation of a hazardous material within the United States:

(i) The cylinder was manufactured on or after January 1, 1977;

(ii) During the manufacturing process, the cylinder was marked with an approval number and an inspector's mark authorized by TDG or by its predecessor, the Railway Transport Committee of the Canadian Transport Commission (CTC), in its regulations for the Transport of Dangerous Commodities by Rail and was marked ''CTC'' or ''TDG'';

(iii) The cylinder is in full conformance with the specifications prescribed by the TDG regulations;

(iv) The cylinder has been requalified under a program authorized by the Canadian regulations or requalified in accordance with subpart C of part 180 of this subchapter within the prescribed requalification period; and

(v) At the time the requalification is performed, in addition to the markings prescribed in § 180.211 of this subchapter, the cylinder is marked ''DOT/'' immediately before the Canadian specification marking.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

12. The authority citation for Part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

13. Section 172.101, in the Hazardous Materials Table, the following changes would be made:

a. For the entry ''Cyanogen'', in Column (8b), the reference ''192'' would be removed and ''304'' would be added in its place.

b. For the entry ''Germane'', in Column (8b), the reference ''192'' would be removed and ''302'' would be added in its place.

c. For the entry ''Iron pentacarbonyl'', in Column (8b), the reference ''192'' would be removed and ''226'' would be added in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

§ 173.34 [Removed]

15. Section 173.34 would be removed.

16. Section 173.40 would be revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

When this section is referenced for a hazardous material elsewhere in this subchapter, the following requirements are applicable to cylinders used for that material:

(a) *Authorized cylinders.* A cylinder must conform to one of the specifications for cylinders in subpart C of part 178 of this subchapter, except that Specification 8, 8AL, and 39 cylinders are not authorized. After [EFFECTIVE DATE OF THE FINAL RULE] DOT 3AL cylinders made of aluminum alloy 6351 may not be filled and offered for transportation or transported with a Division 2.3, Zone A or B material, a Division 6.1, Zone A or B material or any liquid that meets the definition of Division 6.1 and meets criteria for Packing Group I, Hazard Zones A or B, as specified in § 173.133.

(b) *Closures.* Each cylinder containing a Hazard Zone A material must be closed with a plug or valve conforming to the following:

(1) Each plug or valve must have a taper-threaded connection directly to the cylinder and be capable of withstanding the test pressure of the cylinder;

(2) Each valve must be of the packless type with non-perforated diaphragm, except that for corrosive materials, a valve may be of the packed type provided the assembly is made gas-tight by means of a seal cap with gasketed joint attached to the valve body or the cylinder to prevent loss of material through or past the packing;

(3) Each valve outlet must be sealed by a threaded cap or threaded solid plug; and

(4) Cylinder, valves, plugs, outlet caps, luting and gaskets must be compatible with each other and with the lading.

(c) *Additional handling protection.* Each cylinder or cylinder overpack combination offered for transportation containing a Division 2.3 or 6.1 Hazard Zone A or B material must meet the puncture resistance and valve damage protection performance requirements of this section. In addition to the requirements of this section, overpacks must conform to the overpack provisions of § 173.25.

(1) *Puncture resistance.* Each cylinder or cylinder overpack combination must be qualified under the puncture resistance test specified in § 178.69(h)(3) of this subchapter. However, a cylinder meeting the conditions in the following table is excepted from the puncture resistance test requirements of this section and of § 178.69(h)(3) of this subchapter:

DOT specification/material	Maximum water filled gross weight (lbs.)	Minimum wall thickness (inch)
3A	215	0.180
3AA	255	0.220

(2) *Valve damage protection.* Each cylinder with a valve must be equipped with a protective cap, other valve protection device or an overpack sufficient to protect the valve from deformation, breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface. Impact must be at an orientation most likely to cause damage.

(d) *Interconnection.* Cylinders may not be manifolded or interconnected.

§ 173.115 [Amended]

17. In § 173.115, in paragraph (c)(2), in the last sentence, the wording ''or CGA Pamphlet P–20'' is added immediately following the word ''subpart''.

18. In § 173.115, in paragraph (j), the reference ''§ 173.304(a)(2)'' would be revised to read ''§ 173.304a(a)(2)''.

19. Section 173.163 would be revised to read as follows:

§ 173.163 Hydrogen fluoride.

Hydrogen fluoride (hydrofluoric acid, anhydrous) must be packaged in specification 3, 3A, 3AA, 3B, 3BN, 3E, 4A, or 3M cylinders; or Specification 4B, 4BA, 4BW, or 4M cylinders, if they are not brazed. Filling density may not exceed 85 percent of the cylinder's water weight capacity. Metric-marked cylinders must be requalified by ultrasonic examination in accordance with § 180.207 of this subchapter. Nonmetric-marked cylinders must be requalified by ultrasonic examination in accordance with § 180.209(a)(2) of this subchapter.

20. Section 173.192 would be revised to read as follows:

§ 173.192 Packaging for certain toxic gases in Hazard Zone A.

When § 172.101 of this subchapter specifies that a toxic material be packaged under this section, only specification cylinders are authorized, as follows:

(a) Specification 3A1800, 3AA1800, 3AL1800, or 3E1800 cylinders; 3M, 3ALM, or 3FM cylinders with a marked test pressure of 200 bar (2900 psig); under the following conditions:

(1) Specification 3A, 3AA, 3AL, 3M, 3ALM, or 3FM cylinders may not exceed 57 kg (125 pounds) water capacity (nominal).

(2) Specification 3AL or 3ALM cylinders may only be offered for transportation or transported by highway and rail.

(b) Packagings must conform to the requirements of § 173.40.

(c) For cylinders used for phosgene:

(1) The filling density may not exceed 125 percent;

(2) A cylinder may not contain more than 68 kg (150 pounds) of phosgene; and

(3) Each cylinder containing phosgene must be tested for leakage before it is offered for transportation or transported and must show no leakage; this test must consist of immersing the cylinder and valve, without the protection cap attached, in a bath of water at a temperature of approximately 66'C (150'F) for at least 30 minutes, during which time frequent examinations must be made to note any escape of gas. The valve of the cylinder must not be loosened after this test. Alternatively, each cylinder containing phosgene may be tested for leakage by a method approved in writing by the Associate Administrator for Hazardous Materials Safety.

§ 173.198 [Amended]

21. In § 173.198, in paragraph (a), the reference ''§ 173.34(e)'' would be revised to read ''§ 180.205 of this subchapter''.

22. In § 173.226, paragraph (a) would be revised to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

* * * * *

(a) In seamless specification cylinders conforming to the requirements of § 173.40.

* * * * *

23. In § 173.227, paragraph (a) would be revised to read as follows:

§ 173.227 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone B.

* * * * *

(a) In packagings as authorized in § 173.226 and seamless and welded specification cylinders conforming to the requirements of § 173.40.

* * * * *

24. Section 173.228 would be revised to read as follows:

§ 173.228 Bromine pentafluoride or bromine trifluoride.

(a) The following packagings are authorized:

(1) Specification 3A150, 3AA150, 3B240, 3BN150, 4B240, 4BA240, 4BW240 and 3E1800 cylinders;

(2) Specification 3M, 3ALM, 3FM, and 4M cylinders with a minimum marked test pressure of 25 bar (363 psig).

(b) Material in Hazard Zones A and B must be transported in cylinders conforming to the requirements of § 173.40, except that material in Hazard Zone A must be transported only in seamless specification cylinders.

(c) Cylinder valves must be protected as specified in § 173.301(h). No cylinder may be equipped with any pressure relief device.

§§ 173.300a, 173.300b, 173.300c [Removed]

25. In part 173, §§ 173.300a, 173.300b, and 173.300c would be removed.

26. Section 173.301 would be revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

(a) *General qualifications for use of cylinders.* As used in this subpart, *filled* means an introduction or presence of a hazardous material in a cylinder. A Class 2 material (gas) offered for transportation in a cylinder must be prepared in accordance with this section and §§ 173.302 through 173.305.

(1) Compressed gases must be in metal cylinders and containers built in accordance with the DOT (and ICC, as shown) specifications, as shown in this paragraph (a)(1), in effect at the time of manufacture, and marked as required by the specification and the regulation for requalification if applicable:

Packagings

2P
2Q
ICC–3[1]
3A[1]
3AA[1]
3AL[1]
3ALM
3AX[1]
3A480X[1]
3AAX[1]
3B[1]
3BN[1]
3E
3FM
3HT
3M
3T[1]
4AA480
4B[1]
4B240ET[1]
4BA[1]
4BW[1]
4D
4DA

[1] Use of existing cylinders is authorized. New construction is not authorized after [FIVE YEARS FROM EFFECTIVE DATE OF THE FINAL RULE], except that new construction of ICC–3 cylinders is currently not authorized.

4DS
4E[1]
4L
4M
8
8AL
39

(2) A cylinder must be filled in accordance with this part. Before each filling of a cylinder, the person filling the cylinder must visually inspect the outside of the cylinder. A cylinder that has a crack or leak, is bulged, has a defective valve or pressure relief device, or bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion may not be used unless it is properly repaired and requalified as prescribed in subpart C of part 180 of this subchapter.

(3) A cylinder that has previously contained a Class 8 material must be requalified in accordance with § 180.205(e) of this subchapter.

(4) When a cylinder with a marked pressure limit is prescribed, another cylinder made under the same specification but with a higher marked pressure limit is authorized. For example, a cylinder marked ''DOT–4B500'' may be used when ''DOT–4B300'' is specified and a cylinder marked ''DOT–3FM140'' may be used when ''DOT–3FM70'' is authorized.

(5) No person may fill a cylinder overdue for periodic requalification with a hazardous material and then offer it for transportation. This requirement does not apply to a cylinder that was filled prior to the requalification due date.

(6) After its authorized service life has expired, a cylinder may not be offered for transportation in commerce.

(7) For nonmetric-marked cylinders, the pressure of the hazardous material at 55°C (131°F) must not exceed the service pressure of the cylinder. Sufficient outage shall be provided so that the cylinder will not be liquid full at 55°C (131°F).

(8) Metric-marked cylinders containing permanent gases must be filled in accordance with § 173.302b.

(9) Metric-marked cylinders containing liquefied gases must be filled in accordance with § 173.304b.

(10) DOT 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, 39, and spherical 4M cylinders must be shipped in strong outside packagings. The strong outside packaging must conform to paragraph (h) of this section and to § 173.25.

(b) *Cylinder markings.* Required markings on a cylinder must be legible and must meet the applicable requirements of subpart C of part 180 of this subchapter. Additional information may be marked on the cylinder provided it does not affect the required markings prescribed in the applicable cylinder specification.

(c) *Toxic gases and mixtures.* Cylinders containing toxic gases and toxic gas mixtures that meet the criteria of Division 2.3 Hazard Zone A or B must conform to the requirements of § 173.40, CGA Pamphlets S–1.1 and S–7. DOT 39 cylinders may not be used for toxic gases or toxic gas mixtures that meet the criteria for Division 2.3 Hazard Zone A or B.

(d) *Gases capable of combining chemically.* A filled cylinder may not contain any gas or material that is capable of combining chemically with the cylinder's contents or with the cylinder material of construction so as to endanger the cylinder's serviceability. After [EFFECTIVE DATE OF THE FINAL RULE] DOT 3AL cylinders made of aluminum alloy 6351 may not be filled and offered for transportation with pyrophoric gases.

(e) *Ownership of cylinder.* A cylinder filled with a hazardous materials may not be offered for transportation unless it was filled by the owner of the cylinder or with the owner's consent.

(f) *Pressure relief device systems.* (1) Except as provided in paragraph (f)(6) and (f)(7) of this section, a cylinder filled with a gas for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location and quantity and tested in accordance with CGA Pamphlets S–1.1 (compliance with paragraph 9.1.1.1 of CGA Pamphlet S–1.1 is not required) and S–7. A pressure relief device is required on a DOT 39 cylinder and a cylinder used for acetylene in solution, regardless of cylinder size or filled pressure. A DOT 39 cylinder used for liquefied Division 2.1 materials must be equipped with a metal pressure relief valve. Fusible pressure relief devices are not authorized on a DOT 39 cylinder containing a liquefied gas.

(2) When installed, a pressure relief device must be in the vapor space of a cylinder.

(3) For a metric-marked cylinder, the start-to-discharge pressure of a pressure relief device may not be less than the marked test pressure of the cylinder. For a nonmetric-marked DOT–3 series cylinder, from the first requalification due on and after [EFFECTIVE DATE OF THE FINAL RULE,] the start-to-discharge pressure of the pressure relief device, may not be less than the minimum required test pressure. To ensure that the relief device does not open below its set pressure, the allowable tolerances for all the pressure relief devices must range from zero to plus 10% of its setting. The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA Pamphlet C–14, or in the case of an acetylene cylinder, CGA Pamphlet C–12.

(4) Before each filling of a cylinder equipped with a pressure relief device, the person filling the cylinder must visually inspect each pressure relief device for corrosion, damage, rust, plugging of external pressure relief device channels, and other mechanical defects such as extrusion of fusible metal. A cylinder with a defective pressure relief device may not be used.

(5) Before a filled cylinder is offered for transportation from the cylinder filling facility, the pressure relief device must be tested for leaks. A cylinder with a leaking pressure relief device may not be offered for transportation.

(6) A pressure relief device is not required on——

(i) A cylinder 305 mm (12 inches) or less in length, exclusive of neck, and 114 mm (4.5 inches) or less in outside diameter, except:

(A) When filled with a liquefied gas for which this part requires a service pressure of 1800 psi or higher for a nonmetric-marked cylinder, and a test pressure of 186 bar (2700 psi) or higher for a metric-marked cylinder; or

(B) When filled with a nonliquefied gas to a pressure less than 1800 psi for a nonmetric-marked cylinder and 124 bar for a metric-marked cylinder.

(ii) A cylinder with a water capacity of less than 454 kg (1000 lbs) filled with a nonliquefied gas to a pressure of 21 bar (300 psi) or less at 21°C (70°F).

(iii) A cylinder containing a Class 3 or a Class 8 material without pressurization unless otherwise specified for the hazardous material.

(7) A pressure relief device is prohibited on a cylinder filled with a Division 2.3 or a Division 6.1 material in Hazard Zone A.

(g) *Manifolding cylinders in transportation.* (1) Cylinder manifolding is only authorized under conditions prescribed in this paragraph (g). Manifolded cylinders shall be supported and held together as a unit by structurally adequate means. Except for Division 2.2 materials, each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines must be sufficiently flexible to prevent damage to the valves which otherwise might result from the use of rigid branch lines. Each cylinder must be individually equipped with a pressure relief device as required in paragraph (f) of this section. Pressure relief devices

on manifolded cylinders, filled with a compressed gas, must be arranged to discharge upward and unobstructed to the open air in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders. Valves and pressure relief devices on manifolded cylinders, filled with a compressed gas, must be protected by framing or other method which is equivalent to the valve protection required in paragraph (h) of this section. Manifolding is authorized for cylinders containing the following gases:

(i) Nonliquefied compressed (permanent)gases authorized by § 173.302.

(ii) Liquefied compressed gases that are authorized by § 173.304. Each manifolded cylinder, containing a liquefied compressed gas, must be separately filled and means must be provided to ensure that no interchange of cylinder contents can occur during transportation.

(iii) Acetylene as authorized by § 173.303.

(2) For the checking of tare weights or for replacement of solvent, the cylinder must be removed from the manifold. This requirement is not intended to prohibit the filling of acetylene cylinders while manifolded.

(h) *Cylinder valve protection.* (1) Except for a cylinder meeting the following conditions, a cylinder offered for transportation must meet the performance requirements specified in paragraph (h)(2) of this section:

(i) A cylinder manufactured before [FIVE YEARS FROM EFFECTIVE DATE OF THE FINAL RULE.];

(ii) A cylinder containing only a Division 2.2 material without a Division 5.1 subsidiary hazard;

(iii) A cylinder containing a Class 9 material or a Class 8 material only corrosive to metal;

(iv) A cylinder with a water capacity of 4.8 liters (293 cubic inches) or less containing oxygen, compressed;

(v) A cylinder containing oxygen, refrigerated liquid (cryogenic liquid).

(2) Each cylinder valve assembly must be of sufficient strength or protected such that no leakage occurs when a cylinder with the valve installed is dropped 1.8 m (6 ft.) or more onto a non-yielding floor, impacting the valve assembly or protection device at an orientation most likely to cause damage. The cylinder valve assembly protection may be provided by any method that meets the performance requirement in this paragraph (h)(2), examples include:

(i) Equipping the cylinder with a securely attached metal cap.

(ii) Packaging the cylinder in a box, crate or other strong outside packaging conforming to the requirements of § 173.25.

(iii) Constructing the cylinder such that the valve is recessed into the cylinder or otherwise protected.

(i) *Cylinders mounted on motor vehicles or in frames.* Seamless DOT specification cylinders longer than two meters (6.5 feet) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity. Cylinders may be transported by rail in container on freight car (COFC) or trailer on flat car (TOFC) service only under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration. The cylinder must be configured as follows:

(1) Each cylinder must be fixed at one end of the vehicle or framework with provision for thermal expansion at the opposite end attachment;

(2) The valve and pressure relief device protective structure must be sufficiently strong to withstand a force equal to twice the weight of the cylinder and framework assembly with a safety factor of four, based on the ultimate strength of the material used; and

(3) Discharge from a pressure relief device shall be arranged in such a manner to prevent any escaping gas from contacting personnel or any adjacent cylinders.

(j) *Non-specification cylinders in domestic use.* Except as provided in paragraphs (k) and (l) of this section, a filled non-DOT specification cylinder, other than a DOT exemption cylinder, may not be offered for transportation or transported to, from, or within the United States.

(k) *Importation of foreign cylinders for discharge within a single port area.* A cylinder manufactured to other than a DOT specification that has been certified as being in conformance with the transportation regulations of another country may be authorized upon written request to and approval by the Associate Administrator for Hazardous Materials Safety, for transportation within a single port area, provided—

(1) The cylinder is transported in a closed freight container;

(2) The cylinder is certified by the importer to provide a level of safety at least equal to that required by the regulations in this subchapter for a comparable DOT specification cylinder; and

(3) The cylinder is not refilled for export unless in compliance with paragraph (l) of this section.

(l) *Charging of foreign cylinders for export.* A cylinder manufactured outside the United States that was not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter or a cylinder manufactured to other than a DOT specification or exemption may be filled with a gas in the United States and offered for transportation and transported for export, if the following conditions are met:

(1) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator for Hazardous Materials Safety.

(2) The maximum filling density and service pressure for each cylinder conform to the requirements of this part for the gas involved.

(3) The bill of lading or other shipping paper shall identify the cylinder and shall carry the following certification: ''This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export.''

(m) *Sharp attachments.* Attachments to cylinders filled for transportation may not have sharp corners, edges, or any other features that are capable of causing puncture or damage to other freight. Attachments include all permanent structural attachments, as well as anything temporarily attached to the cylinder, such as skids.

27. Section 173.301a would be added to read as follows:

§ 173.301a Additional general requirements for shipment of nonmetric-marked cylinders.

(a) *General.* The requirements in this section are in addition to the requirements in § 173.301 and apply to the shipment of gases in nonmetric-marked cylinders.

(b) *Authorized cylinders not marked with a service pressure.* For authorized cylinders not marked with a service pressure, the service pressure is designated as follows:

Specification marking	Service pressure psig
3	1800
3E	1800
8	250

(c) *Cylinder pressure at 21°C (70°F).* The pressure in a cylinder at 21°C (70°F) may not exceed the service pressure for which the cylinder is marked or designated, except as provided in § 173.302a(b). For certain liquefied

gases, the pressure at 21°C (70°F) must be lower than the marked service pressure to avoid having a pressure at a temperature of 54.4°C (131°F) that is greater than permitted.

(d) *Cylinder pressure at 55°C (131°F).* The pressure in a cylinder at 55°C (131°F) may not exceed ¾ times the service pressure, except:

(1) A cylinder filled with acetylene, liquefied nitrous oxide or carbon dioxide.

(2) When a cylinder is filled in accordance with § 173.302a(b), the pressure in the cylinder at 55°C (131°F) may not exceed ¾ times the filling pressure.

28. Section 173.301b would be added to read as follows:

§ 173.301b Additional general requirements for shipment of metric-marked cylinders.

(a) *Definitions.* For purposes of this subpart, the following definitions apply to Class 2 materials in metric-marked cylinders:

Critical temperature means the temperature above which the substance can not exist in the liquid state.

Dissolved gas means a gas which is dissolved under pressure in a liquid phase solvent. The solvent may be supported in a porous mass.

Filling factor of liquefied compressed gas means the mass of a gas, in kg (or pound), which can be filled into a 1 liter (61 cubic inches) water capacity container. The filling factor of each liquefied compressed gas must be calculated to meet all requirements of § 173.304b.

High pressure liquefied compressed gas means a gas which has a critical temperature in the range from − 10 °C (14 °F) to less than 70 °C (158 °F).

Low pressure liquefied compressed gas means a gas which has a critical temperature equal to or above 70 °C (158 °F).

Permanent (non-liquefied compressed) gas means a gas other than in solution, which has a critical temperature below − 10 °C (14 °F).

Safety factor means the ratio of the cylinder burst pressure to its marked test pressure. For example, a cylinder with a marked test pressure of 180 bar (2610 psi) and a burst pressure of 340 bar (4930 psi) and has a safety factor of 1.89.

Settled pressure (formerly referred to as service pressure) means the pressure of the contents of the cylinder at 15 °C (59 °F).

(b) *Pressure in cylinders containing a permanent gas.* The pressure in a DOT 3M, 3FM, 3ALM or 4M cylinder containing a permanent gas must be as prescribed in § 173.302b.

(c) *Pressure in cylinders containing a liquefied compressed gas.* (1) The pressure in a cylinder containing a liquefied compressed gas which has critical temperature ranging from − 10 °C (14 °F) up to 70 °C (158 °F) may not exceed the cylinder's marked test pressure or be liquid full at a temperature of 65 °C (149 °F).

(2) The pressure in a cylinder containing a liquefied compressed gas which has a critical temperature greater than or equal to 70 °C (158 °F) may not exceed the cylinder's marked test pressure or be liquid full at 54 °C (130 °F).

(d) *Authorized gases for DOT 3FM cylinders.* A DOT 3FM cylinder may only be used for gases free of corroding components with a dew point below − 49 °C (− 56 °F). A DOT 3FM cylinder is not authorized for hydrogen or hydrogen bearing gases (e.g., hydrogen sulfide).

29. Section 173.302 would be revised to read as follows:

§ 173.302 Filling of cylinders with non-liquefied compressed gases.

(a) *General requirements.* A cylinder filled with a non-liquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and §§ 173.301, 173.301a, 173.301b, 173.302a, 173.302b and 173.305. Where more than one section applies to a cylinder, the most restrictive requirement must be followed.

(b) *Aluminum cylinders in oxygen service.* Each aluminum cylinder filled with oxygen must meet the following conditions:

(1) Each cylinder must be equipped only with brass or stainless steel valves;

(2) Each cylinder must have only straight threads in the opening;

(3) Each cylinder must be cleaned in accordance with the requirements of Federal Specification RR–C–901c, paragraphs 3.7.2, and 3.8.2. Cleaning agents equivalent to those specified in RR–C–901c may be used provided they do not react with oxygen. One cylinder selected at random from a group of 200 or less and cleaned at the same time, must be tested for oil contamination in accordance with Specification RR–C–901c, paragraph 4.4.2.3, and meet the standard of cleanliness specified; and

(4) The pressure in each cylinder may not exceed 207 bar (3000 psig) at 21 °C (70 °F).

(c) Each authorized cylinder containing oxygen which is continuously fed to tanks containing live fish may be offered for transportation and transported irrespective of the provisions of § 173.24(b)(1).

(d) Shipment of Division 2.1 materials in aluminum cylinders are authorized only when transported by highway, rail, or cargo-only aircraft.

30. Section 173.302a would be added to read as follows:

§ 173.302a Additional requirements for shipment of permanent (nonliquefied) compressed gases in nonmetric-marked cylinders.

(a) *Detailed filling requirements.* Nonliquefied compressed gases (except gas in solution) for which filling requirements are not specifically prescribed in § 173.304a must be shipped, subject to the requirements in this section and §§ 173.301, 173.301a, 173.302 and 173.305 in nonmetric-marked cylinders, as follows:

(1) Specification 3, 3A, 3AA, 3AL, 3B, 3E, 4B, 4BA and 4BW cylinders.

(2) DOT 3HT cylinders. These cylinders are authorized for aircraft use only and only for nonflammable gases. They have a maximum service life of 24 years from the date of manufacture. The cylinders must be equipped with pressure relief devices only of the frangible disc type which meet the requirements of § 173.301(f). Each frangible disc must have a rated bursting pressure which does not exceed 90 percent of the minimum required test pressure of the cylinder. Discs with fusible metal backing are not permitted. Specification 3HT cylinders may be offered for transportation only when packed in strong outer packagings conforming to the requirements of § 173.25.

(3) For a specification 39 cylinder filled with a Division 2.1 material, the internal volume may not exceed 75 cubic inches.

(4) Specification 3AX, 3AAX, and 3T cylinders are authorized for Division 2.1 and 2.2 materials and for carbon monoxide. DOT 3T cylinders are not authorized for hydrogen. When used in methane service, the methane must be a non-liquefied gas which has a minimum purity of 98.0 percent methane and which is commercially free of corroding components.

(5) Aluminum cylinders made to DOT specification 39 and 3AL are authorized for oxygen only under the conditions specified in § 173.302(b).

(b) *Special filling limits for specification 3A, 3AX, 3AA, 3AAX, and 3T cylinders.* A specification 3A, 3AX, 3AA, 3AAX, and 3T cylinders may be filled with a compressed gas, other than a liquefied, dissolved, Division 2.3 or 2.1 material, to a pressure 10 percent in excess of its marked service pressure, provided:

(1) The cylinder is equipped with a frangible disc pressure relief devices (without fusible metal backing) having a bursting pressure not exceeding the minimum prescribed test pressure.

(2) The cylinder's elastic expansion was determined at the time of the last test or retest by the water jacket method.

(3) Either the average wall stress or the maximum wall stress does not exceed the wall stress limitation shown in the following table:

Type of steel	Average wall stress limitation	Maximum wall stress limitation
Plain carbon steels over 0.35 carbon and medium manganese steels	53,000	58,000
Steels of analysis and heat-treatment specified in spec. 3AA	67,000	73,000
Steel of analysis and heat treatment specified in spec. DOT–3T	87,000	94,000
Plain carbon steels less than 0.35 carbon made prior to 1920	45,000	48,000

(i) The average wall stress shall be computed from the elastic expansion data using the following formula:

$S = 1.7EE / KV—0.4P$

Where:

S = wall stress, pounds per square inch;
EE = elastic expansion (total less permanent) in cubic centimeters;
K = factor $\times 10^{-7}$ experimentally determined for the particular type of cylinder being tested or derived in accordance with CGA Pamphlet C–5;
V = internal volume in cubic centimeter (1 cubic inch = 16.387 cubic centimeters);
P = test pressure, pounds per square inch.

(ii) The maximum wall stress shall be computed from the formula:

$S = (P(1.3D^2 + 0.4d^2)) / (D^2\text{-}d^2)$

Where:

S = wall stress, pounds per square inch;
P = test pressure, pounds per square inch;
D = outside diameter, inches;
d = D–2t, where t=minimum wall thickness determined by a suitable method.

(iii) The formula in paragraph (b)(3)(i) of this section is derived from the formula in paragraph (b)(3)(ii) and the following:

$EE = (PKVD^2) / (D^2\text{-}d^2)$

(iv) Compliance with average wall stress limitation may be determined through computation of the elastic expansion rejection limit in accordance with CGA Pamphlet C–5 or through the use of the manufacturer's marked elastic expansion rejection limit (REE) on the cylinder.

(4) That an external and internal visual examination made at the time of test or retest shows the cylinder to be free from excessive corrosion, pitting, or dangerous defects.

(5) That a plus sign (+) be added following the test date marking on the cylinder to indicate compliance with paragraphs (b) (2), (3), and (4) of this section.

(c) *Carbon monoxide.* Carbon monoxide must be offered in a specification 3, 3A, 3AX, 3AA, 3AAX, 3AL, 3E, or 3T cylinder having a minimum service pressure of 1,800 psig. The pressure in the cylinder may not exceed 1000 psig at 70° F., except that if the gas is dry and sulfur free, the cylinder may be filled to five-sixths of the cylinder's service pressure or 2000 psig, whichever is less. A DOT 3AL cylinder is authorized only when transported by highway, rail or cargo-only aircraft.

(d) *Diborane and diborane mixtures.* Diborane and diborane mixed with compatible compressed gas must be offered in a DOT 3AA1800 cylinder. The maximum filling density of the diborane may not exceed 7 percent. Diborane mixed with compatible compressed gas may not have a pressure exceeding the service pressure of the cylinder if complete decomposition of the diborane occurs. Cylinder valve assembles must be protected in accordance with § 173.301(h).

(e) *Fluorine.* Fluorine must be offered in a DOT 3A1000, 3AA1000, or 3BN400 cylinder without a pressure relief device and equipped with a valve protection cap. The cylinder may not be filled to over 400 psig at 70° F. and may not contain over 6 pounds of gas.

31. Section 173.302b would be added to read as follows:

§ 173.302b Additional requirements for shipment of permanent gases in metric-marked cylinders.

(a) *General requirements.* Permanent gases (except gas in solution) must be shipped, subject to this section and §§ 173.301, and 173.301b in a DOT specification 3ALM, 3M, 3FM or 4M cylinder.

(1) A cylinder with a marked test pressure greater than or equal to 35 bar (508 psi) is authorized for transportation of Division 2.1, 2.2, or 2.3 Hazard Zone B,C or D gas.

(2) A DOT 3ALM, 3M, or 3FM cylinder with a marked test pressure greater than or equal to 200 bar (2900 psi) is authorized for transportation of Division 2.3 Hazard Zone A gases.

(3) The settled pressure for a DOT 3M, 3FM or 3ALM cylinder may not exceed two-thirds of the cylinder's marked test pressure.

(4) The settled pressure for a DOT 4M cylinder and a DOT 3M cylinder made from nickel may not exceed one-half of the cylinder's marked test pressure.

(5) A DOT 3FM cylinder exceeding 454 kilogram (1000 pounds) water capacity is authorized for dry compressed natural gas (scrubbed to remove acid gases). The cylinder may not contain any liquefied gas and the gas must meet following conditions:

(i) Water content is less than or equal to 0.5 lb. per million cubic feet at standard temperature and pressure (STP) (60° F., 30 inches Hg).

(ii) Hydrogen Sulfide and Mercaptan Sulfur in Natural Gas is less than or equal to 0.1 grain per 100 cubic feet.

(iii) Total Soluble Sulfides other than Hydrogen Sulfide must be less than or equal to 0.1 grain per 100 cubic feet at STP.

(iv) Less than one percent by volume of oxygen.

(v) Less than three percent by volume of carbon dioxide.

(b) *Pressure Limit.* Pressure in a cylinder containing a permanent gas at 70 °C (158 °F) may not exceed the values in the following table:

Division	Percentage of cylinder's marked test pressure
2.3, Zone A	63
2.3, Zone B, C	70
2.1/5.1; 2.3, Zone D	78
2.2	100

(c) *Fluorine.* Fluorine must be shipped in DOT 3M or 4M cylinders without pressure relief devices. The settled pressure may not exceed ¼ of the cylinder's marked test pressure, or be more than 28 bar (400 psig) at 21 °C (70 °F). The cylinder may not contain over 2.7 kg (6 pounds) of gas.

(d) *Carbon monoxide.* A cylinder filled with carbon monoxide may not exceed ⅓ of the cylinder's marked test pressure, except that if the gas is dry and sulfur free, settled pressure may not exceed ½ of the cylinder's marked test pressure.

(e) *Diborane and diborane mixtures.* Diborane and diborane mixed with a compatible compressed gas must be

shipped in a DOT 3M cylinder and the settled pressure may not exceed ⅓ of the cylinder's marked test pressure. The maximum filling density of the diborane may not exceed 7 percent. Diborane mixed with a compatible compressed gas may not have a settled pressure exceeding ⅔ of the cylinder's marked test pressure if complete decomposition of the diborane occurs. The cylinder valve must be protected in accordance with § 173.301(h).

32. Section 173.304 would be revised to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

(a) *General requirements.* Liquefied compressed gases (except gas in solution) must be shipped in accordance with the requirements in this section and in §§ 173.301, 173.301a, 173.301b, 173.304a, 173.304b and 173.305.

(1) DOT 3AL, 3ALM, 3FM and 4M cylinders may not be used for any material that has a primary or subsidiary hazard of Class 8.

(2) Shipments of Division 2.1 materials in aluminum cylinders are authorized only when transported by highway, rail or cargo-only aircraft.

(b) *Filling limits.* Except for carbon dioxide, 1,1-Difluoroethylene (R–1132A), nitrous oxide and vinyl fluoride, inhibited, the liquid portion of a liquefied gas may not completely fill the packaging at any temperature up to and including 54° C (130° F). The liquid portion of vinyl fluoride, inhibited, may completely fill the cylinder at 54° C (130° F) provided; the pressure at the critical temperature does not exceed one and one-fourth times the service pressure of a nonmetric-marked cylinder; or the pressure at the critical temperature does not exceed 83% of the test pressure of a metric-marked cylinder.

(c) *Mixture of compressed gas and other material.* A mixture of compressed gas must be shipped in accordance with § 173.305.

(d) *Refrigerant gases.* Refrigerant gases which are nontoxic and nonflammable under this part, must be offered for transportation in cylinders prescribed in §§ 173.304a, 173.304b, or in DOT 2P and 2Q containers (§§ 178.33, 178.33a of this subchapter). DOT 2P and 2Q containers must be packaged in a strong wooden or fiberboard box of such design as to protect valves from injury or accidental functioning under conditions incident to transportation. Pressure in the inside metal containers may not exceed 6 bar absolute (87 psia) at 21° C (70° F). Each completed metal container filled for shipment must be heated until its contents reach a temperature of 54° C (130° F) without evidence of leakage, distortion, or other defect. Each outside package must be plainly marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS.''

(e) *Engine starting fluid.* Engine starting fluid containing a flammable compressed gas or gases must be shipped in a cylinder as prescribed in § 173.304a, 173.304b, or as follows:

(1) Inside nonrefillable metal containers having a capacity not greater than 500 ml (32 cubic inches). The containers must be packaged in strong, tight outer packagings. The pressure in the container may not exceed 10 bar absolute (145 psia), at 54 °C (130 °F). However, if the pressure exceeds 10 bar absolute (145 psia), at 54 °C (130 °F), a DOT 2P container must be used. In any event, the metal container must be capable of withstanding, without bursting, a pressure of one and one-half times the pressure of the content at 54 °C (130 °F). The liquid content of the material and gas must not completely fill the container at 54 °C (130 °F). Each container, filled for shipment, must have been heated until its contents reach a temperature of 54 °C (130 °F), without evidence of leakage, distortion, or other defect. Each outside shipping container must be plainly marked, ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS.''

(2) [Reserved]

33. Section 173.304a would be added to read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in nonmetric-marked cylinders.

(a) *Detailed filling requirements.* Liquefied gases (except gas in solution), must be offered for transportation, subject to the requirements in this section and §§ 173.301, 173.301a and 173.304, in nonmetric-marked cylinders, as follows:

(1) Specification 3, 3A, 3AA, 3B, 3BN, 3E, 4B, 4BA, 4B240ET, 4BW, 4E, 39, except that no Specification 4E or 39 packaging may be filled and shipped with a mixture containing a pyrophoric liquid, carbon bisulfide (disulfide), ethyl chloride, ethylene oxide, nickel carbonyl, spirits of nitroglycerin, or toxic material (Division 6.1 or 2.3), unless specifically authorized in this part.

(2) The following requirements must be complied with for the gases named (for cryogenic liquids, see § 173.316):

Kind of gas	Maximum permitted filling density (percent) (See Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.301(1), 173.301(a)(4) (see notes following table)
Anhydrous ammonia	54	DOT–4; DOT–3A480; DOT–3AA480; DOT–3A480X; DOT–4A480; DOT–3; DOT–4AA480; DOT–3E1800; DOT–3AL480.
Bromotrifluoromethane (R–13B1 or H–1301).	124	DOT–3A400; DOT–3AA400; DOT–3B400; DOT–4A400; DOT–4AA480; DOT–4B400; DOT–DOT–4BA400; DOT–4BW400; DOT–3E1800; DOT–39; DOT–3AL400.
Carbon dioxide (see notes 4, 7, and 8)	68	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–3HT2000; DOT–39; DOT–DOT–4L.
Carbon dioxide, refrigerated liquid (see paragraph (e) of this section.) Chlorine (see Note 2).	125	DOT–3AL1800. DOT–3A480; DOT–3AA480; DOT–3; DOT–3BN480; DOT–3E1800.
Chlorodifluroethane (R–142b) or 1–Chloro–1, 4B150; DOT–4BA225; DOT–4BW225; DOT–1–difluoroethane (Note 8).	100	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–3E1800; DOT–39, DOT–3AL150.
Chlorodifluoromethane (R–22) (see Note 8).	105	DOT–3A240; DOT–3AA240; DOT–3B240; DOT– 4B240; DOT–4BA240; DOT–4BW240; DOT–4B240ET; DOT–4E240; DOT–39; DOT–41; DOT–3E1800; and DOT–3AL240.
Chloropentafluorethane, (R–115)	110	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4BA225; DOT–4B225; DOT–4BW225; DOT–3E1800; DOT–39; and DOT–3AL225.
Chlorotrifluoromethane (R–13) (see Note 8).	100	DOT–3A1800; DOT–3AA1800; DOT–3; DOT–3E1800; DOT–39; and DOT–3AL1800.

Kind of gas	Maximum permitted filling density (percent) (See Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.301(1), 173.301(a)(4) (see notes following table)
Cyclopropane (see Note 8)	55	DOT–3A225; DOT–3A480X; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4AA480; DOT4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–3; DOT–3E1800; DOT–39;DOT–3AL225.
Dichlorodifluoromethane (R–12) (see Note 8).	119	DOT–3A225; DOT–3AA225; DOT–3B225;DOT– 4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–4E225;DOT–9; DOT–39; DOT–41; DOT–3E1800; and DOT–3AL225.
Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500)(Note 8).	Not liquid full at 130 °F.	DOT–3A240; DOT–3AA240, DOT–3B240; DOT–3E1800; DOT–4A240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4E240; DOT–9, DOT–39.
1,1–Difluoroethane (R–152a) (see Note 8).	79	DOT–3A150; DOT–3AA150; DOT–3B150;DOT–4B150; DOT–4BA225; DOT–4BW225; DOT–3E1800; DOT–3AL150.
1,1–Difluoroethylene (R–1132A)	73	DOT–3A2200, DOT–3AA2200, DOT–3AX2200, DOT–3AAX2200, DOT–3T2200, DOT–39.
Dimethylamine, anhydrous	59	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–4B150 DOT–4BA225; DOT–4BW225; ICC–3E1800.
Ethane (see Note 8)	35.8	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–39; DOT–3AL1800.
Ethane (see Note 8)	36.8	DOT–3A2000; DOT–3AX2000; DOT–3AA2000; DOT–3AAX2000; DOT–3T2000; DOT–39; DOT–3AL2000.
Ethylene (see Note 8)	31.0	DOT–3A1800; DOT–3AX1800 DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–39; and DOT–3AL1800 .
Ethylene (see Note 8)	32.5	DOT–3A2000; DOT–3AX2000; DOT–3AA2000; DOT–3AAX2000; DOT–3T2000; DOT–39; and DOT–3AL2000.
Ethylene (see Note 8)	35.5	DOT–3A2400; DOT–3AX2400; DOT–3AA2400; DOT–3AAX2400; DOT–3T2400; DOT–39; DOT–3AL2400.
Hydrogen chloride, anhydrous	65	DOT–3A1800; DOT–3AA1800; DOT–3AX1800; DOT–3AAX1800; DOT–3; DOT–3T1800; DOT–3E1800.
Hydrogen sulfide (see Note 10)	62.5	DOT–3A480; DOT–3AA480; DOT–3B480; DOT–14A480; DOT–4B480; DOT–4BA480; DOT–4BW480.; DOT–3E1800; DOT–3AL480.
Insecticide, gases liquefied (See Notes 8 and 12).	Not liquid full at 130 °F.	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–9; DOT–40; DOT–41; DOT–3E1800.
Liquefied nonflammable gases, liquid other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/nitrogen carbon dioxide, or air (see Notes 7 and 8).	Not liquid full at 130 °F.	Specification packaging authorized in paragraph (a)(1) of this section and DOT–3HT; DOT 4D; DOT–4DA; DOT–4DS.
Methyl acetylene–propadiene, mixtures, stabilized (see Note 5).	Not liquid full at 130 °F.	DOT–4B240 without brazed seams; DOT–4BA240 without brazed seams; DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800;DOT–4BW240; DOT–4E240; DOT–4B240ET;DOT–4;DOT–41; DOT–3AL240.
Methyl chloride	84	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–3; DOT–4; DOT–38; DOT–3E1800; DOT–4B240ET. Cylinders complying with DOT–3A150; DOT–3B150; DOT–4A150, and DOT–4B150 manufactured prior to Dec. 7, 1936 are also authorized.
Methyl mercaptan	80	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–4B240; DOT–4B240ET; DOT–3E1800; DOT–4BA240; DOT–4BW240.
Nitrosyl chloride	110	DOT–3BN400 only.
Nitrous oxide (see Notes 7, 8, and 11)	68	DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3T1800; DOT–3HT2000; DOT–39; DOT–3AL1800.
Nitrous oxide, refrigerated liquid (see paragraph (e) of this section.).		DOT–4L.
Refrigerant gas, n.o.s. or Dispersant gas, n.o.s. (see Notes 8 and 13).	Not liquid full at 130 °F.	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4A240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4E240; DOT–9; DOT–39; and DOT–3AL240.
Sulfur dioxide (see note 8)	125	DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–3; DOT–4; DOT–38; DOT–39; DOT–3E1800; and DOT–3AL225.
Sulfur hexafluoride	120	DOT–3A1000; DOT–3AA1000; DOT–3AAX2400; DOT–3; DOT–3AL1000; DOT–3E1800; DOT–3T1800.
Sulfuryl fluoride	106	DOT–3A480; DOT–3AA480; DOT–3E1800; DOT–4B480; DOT–4BA480; DOT–4BW480.
Tetrafluoroethylene/inhibit	90	DOT–3A1200; DOT–3AA1200; DOT–3E1800.
Trifluorochloroethylene, inhibited	115	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4A300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–3E1800.
Trimethylamine, anhydrous	57	DOT–3A150; DOT–3AA150; DOT–3B150; DOT–4B150; DOT–4BA225; DOT–4BW225; DOT–3E1800.
Vinyl chloride (see Note 5)	84	DOT–4B150 without brazed seams; DOT–4BA225 without brazed seams; DOT–4BW225; DOT–3A150; DOT–3AA150; DOT–3E1800; DOT–3AL150.
Vinyl fluoride, inhibited	62	DOT–3A1800; DOT–3AA1800; DOT–3E1800; DOT–3AL1800.

Kind of gas	Maximum permitted filling density (percent) (See Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.301(1), 173.301(a)(4) (see notes following table)
Vinyl methyl ether, inhibited (see Note 5).	68	DOT–4B150, without brazed seams; DOT–4BA225 without brazed seams; DOT–4BW225; DOT–3A150; DOT–3AA150; DOT–3B1800; DOT–3E1800.

Note 1: ''Filling density'' means the percent ratio of the weight of gas in a container to the weight of water that the container will hold at 60 °F. (1 lb of water=27.737 cubic inches at 60 °F.).

Note 2: Cylinders purchased after Oct. 1, 1944, for the transportation of chlorine must contain no aperture other than that provided in the neck of the cylinder for attachment of a valve equipped with an approved pressure relief device. Cylinders purchased after Nov. 1, 1935, and filled with chlorine must not contain over 150 pounds of gas.

Note 3: [Reserved]

Note 4: Special carbon dioxide mining devices containing a heating element and filled with not over 6 pounds of carbon dioxide may be filled to a density of not over 85 percent, provided the cylinder is made of steel with a calculated bursting pressure in excess of 39,000 psi, be fitted with a frangible disc that will operate at not over 57 percent of that pressure, and be able to withstand a drop of 10 feet when striking crosswise on a steel rail while under a pressure of at least 3,000 psi. Such devices must be shipped in strong boxes or must be wrapped in heavy burlap and bound by 12-gauge wire with the wire completely covered by friction tape. Wrapping must be applied so as not to interfere with the functioning of the frangible disc pressure relief device. Shipments must be described as ''liquefied carbon dioxide gas (mining device)'' and marked, labeled, and certified as prescribed for liquefied carbon dioxide.

Note 5: All parts of valve and pressure relief devices in contact with contents of cylinders must be of a metal or other material, suitably treated if necessary, which will not cause formation of any acetylides.

Note 6: [Reserved]

Note 7: Specification 3HT cylinders for aircraft use only, having a maximum service life of 24 years. Authorized only for nonflammable gases. Cylinders must be equipped with pressure relief devices only of the frangible disc type which meet the requirements of § 173.301(f) Each frangible disc must have a rated bursting pressure which does not exceed 90 percent of the minimum required test pressure of the cylinder. Discs with fusible metal backing are not permitted. Cylinders may be shipped only when packed in strong outside packagings.

Note 8: See § 173.301(a)(10).

Note 9: [Reserved]

Note 10: Each valve outlet must be sealed by a threaded cap or a threaded solid plug.

Note 11: Must meet the valve and cleaning requirements in § 173.302(b).

Note 12: For an insecticide gas which is nontoxic and nonflammable, see § 173.305(c).

Note 13: For a refrigerant or dispersant gas which is nontoxic and nonflammable, see § 173.304(d).

(3) The internal volume of a Specification 39 cylinder may not exceed 75 cubic inches for a liquefied flammable gas.

(b) [Reserved]

(c) *Verification of content in cylinder.* Except as noted in paragraph (d)(4) of this section, the amount of liquefied gas filled into a cylinder must be by weight or, when the gas is lower in pressure than required for liquefaction, a pressure-temperature chart for the specific gas may be used to ensure that the service pressure at 21° C (70° F) times 5/4 will not be exceeded at 54° C (130° F). The weight of liquefied gas filled into the container also must be checked, after disconnecting the cylinder from the filling line, by the use of a proper scale.

(d) *Requirements for liquefied petroleum gas.* (1) Filling density limited as follows:

Minimum specific gravity of liquid material at 60 °F	Maximum the filling density in percent of the water-weight capacity of the cylinder
0.271 to 0.289	26
0.290 to 0.306	27
0.307 to 0.322	28
0.323 to 0.338	29
0.339 to 0.354	30
0.355 to 0.371	31
0.372 to 0.398	32
0.399 to 0.425	33
0.426 to 0.440	34
0.441 to 0.452	35
0.453 to 0.462	36
0.463 to 0.472	37
0.473 to 0.480	38
0.481 to 0.488	39
0.489 to 0.495	40
0.496 to 0.503	41
0.504 to 0.510	42
0.511 to 0.519	43
0.520 to 0.527	44
0.528 to 0.536	45
0.537 to 0.544	46
0.545 to 0.552	47
0.553 to 0.560	48
0.561 to 0.568	49
0.569 to 0.576	50
0.577 to 0.584	51
0.585 to 0.592	52
0.593 to 0.600	53
0.601 to 0.608	54
0.609 to 0.617	55
0.618 to 0.626	56
0.627 to 0.634	57

(2) Subject to § 173.301a(d), any filling density percentage prescribed in this section is authorized to be increased by 2 for liquefied petroleum gas in specification 3 cylinders or in specification 3A cylinders marked for 1,800 psig, or higher, service pressure.

(3) Liquefied petroleum gas must be shipped in specification cylinders as follows:

(i) Specification 3, 3A, 3AA, 3B, 3E, 3AL, 4B, 4BA, 4B240ET, 4BW, 4E, or 39 cylinders. Shipments of flammable gases in 3AL cylinders are authorized only when transported by highway, rail or cargo-only aircraft.

(ii) Additional containers may be used within the limits of quantity and pressure as follows:

Type of container	Maximum capacity cubic inches	Maximum charging pressure—psig
DOT–2P or DOT–2Q (see Note 1)	31.83	45 psig at 70 °F. and 105 psig at 130 °F. (see Note 2).

Type of container	Maximum capacity cubic inches	Maximum charging pressure—psig
DOT–2P or DOT–2Q (see Note 1)	31.83	35 psig at 70 °F. and 100 psig at 130 °F.

Note 1: Containers must be packed in strong wooden or fiber boxes of such design as to protect valves from damage or accidental functioning under conditions normally incident to transportation. Each completed container filled for shipment must have been heated until its contents reach a temperature of 130 °F., without evidence of leakage, distortion, or other defect. Each outside shipping container must be plainly marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS.''

Note 2: A container must be equipped with a pressure relief device which will prevent rupture of the container and dangerous projection of a closing device when exposed to fire.

(4) Verification of content. Cylinders with a water capacity of 200 pounds or more and for use with a liquefied petroleum gas with a specific gravity at 60 °F. of 0.504 or greater may have the quantity of their contents determined by using a fixed length dip tube gauging device. The length of the dip tube shall be such that when a liquefied petroleum gas, with a specific volume of 0.03051 cu. ft./lb. at a temperature of 40 °F., is filled into the container the liquid just reaches the bottom of the tube. The weight of this liquid may not exceed 42 percent of the water capacity of the container which must be stamped thereon. The length of the dip tube, expressed in inches carried out to one decimal place and prefixed with the letters ''DT'' shall be stamped on the container and on the exterior of removable type dip tube; for the purpose of this requirement the marked length shall be expressed as the distance measured along the axis of a straight tube from the top of the boss through which the tube is inserted to the proper level of the liquid in the container. The length of each dip tube shall be checked when installed by weighing each container after filling except when installed in groups of substantially identical containers in which case one of each 25 containers shall be weighed. The quantity of liquefied gas in each container must be checked by means of the dip tube after disconnecting from the filling line. The outlet from the dip tube shall be not larger than a No. 54 drill size orifice. A container representative of each day's filling at each charging plant shall have its contents checked by weighing after disconnecting from the filling line.

(e) *Carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid.* (1) The following provisions apply to carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid:

(i) DOT 4L cylinders conforming to the provisions of this paragraph are authorized.

(ii) Each cylinder must be protected with at least one pressure relief device and at least one frangible disc conforming to § 173.301(f) and paragraph (a)(2) of this section. The relieving capacity of the pressure relief device system must be equal to or greater than that calculated by the applicable formula in paragraph 5.9 of CGA Pamphlet S–1.1.

(iii) The temperature and pressure of the gas at the time the shipment is offered for transportation may not exceed −18 °C (0 °F) and 20 bar (290 psig) for carbon dioxide and −15.6 °C (+4 °F) and 20 bar(290 psig) for nitrous oxide. Maximum time in transit may not exceed 120 hours.

(2) The following pressure relief device settings, design service temperatures and filling densities apply:

Pressure relief device setting maximum start-to discharge gauge pressure in bar (psig)	Maximum permitted filling density (percent by weight)	
	Carbon dioxide, refrigerated liquid	Nitrous oxide, refrigerated liquid
7.2 bar (105 psig)	108	104
11.7 bar (170 psig)	105	101
16 bar (230 psig)	104	99
20 bar (295 psig)	102	97
25 bar (360 psig)	100	95
31 bar (450 psig)	98	83
37 bar (540 psig)	92	87
43 bar (625 psig)	86	80
Design service temperature °C (°F)	−196 °C (−320 °F)	−196 °C (−320 °F)

34. Section 173.304b would be added to read as follows:

§ 173.304b Additional requirements for shipment of liquefied compressed gases in metric-marked cylinders.

(a) *General requirements.* Liquefied gases must be offered for transportation, subject to the requirements in this section, §§ 173.301, 173.301b and 173.304, in the following metric-marked cylinders: DOT 3M, 3FM, 3ALM, and 4M. A filling factor must be calculated for each liquefied compressed gas to meet the following conditions:

(1) The cylinder may not be liquid full at 55 °C (131 °F). In addition, for a low pressure liquefied compressed gas, the vapor space must be at least 5% of the cylinder internal volume at 50 °C (122 °F).

(2) A cylinder with a marked test pressure greater than or equal to 35 bar (508 psi) is authorized for transportation of Division 2.1, 2.2, and 2.3, gases Hazard Zone B, C or D gas.

(3) A DOT 3ALM, 3M, or 3FM cylinder with a marked test pressure greater than or equal to 200 bar (2900 psi) is authorized for transportation of a Division 2.3 Hazard Zone A gas.

(4) The pressure in a cylinder containing a high pressure liquefied compressed gas at 65 °C (149 °F) or low pressure liquefied compressed gas at 55 °C (131 °F) may not exceed the values in the following table:

Division	Percentage of cylinder's marked test pressure
2.3, Zone A	63
2.3, Zone B, C	70
2.1/5.1; 2.3, Zone D	78
2.2	100

(5) Vapor pressure may not exceed, at the maximum anticipated temperature during transportation, the cylinder's marked test pressure.

(6) Cylinder valve and fittings must be rated at or above the cylinder's burst pressure. The suitability of the cylinder, valve and fitting materials must be checked, at the maximum anticipated temperature during transportation, for operation.

(b) A DOT 3FM cylinder may not be used for a material that has a primary or subsidiary hazard of Class 8, hydrogen sulfide or other sulfide bearing compounds, carbon dioxide, carbon monoxide, atmospheric gases with a dew point above −50 °C (−58 °F), or any other material where the addition of water may make the material corrosive.

(c) A DOT 3FM or 3ALM cylinder may not be used for reclaimed refrigerant gases.

§ 173.305 [Amended]

35. In § 173.305, paragraph (b) would be amended by revising the reference ''173.301(e)'' to read ''173.301a(c)''.

§ 173.306 [Amended]

36. In 173.306, the following changes would be made:

a. Paragraph (d)(3)(ii) would be amended by revising the reference ''§ 173.301'' to read ''§ 173.301a or § 173.301b''.

b. Paragraph (g)(5) would be amended by revising the reference ''§ 173.301(k)'' to read ''§ 173.301(a)(10)''.

37. In 173.315, in paragraph (a), in Note 2 following the table, the reference ''§ 173.301(d)'' would be revised to read ''paragraph (p) of this section'' and paragraph (p) would be added to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(p) Manifolding is authorized for cargo tanks containing anhydrous ammonia provided that each individual cargo tank is equipped with a pressure relief valve or valves and gauging devices as required by paragraphs (h) and (i) of this section. Each valve shall be tightly closed while the cargo tank is in transit. Each cargo tank must be filled separately.

38. Section 173.334 would be revised to read as follows:

§ 173.334 Organic phosphates mixed with compressed gas.

Hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate, tetraethyl pyrophosphate, or other Division 6.1 organic phosphates (including a compound or mixture), may be mixed with a non-flammable compressed gas. This mixture must not contain more than 20 percent by weight of organic phosphate and must be packaged in specification 3A240, 3AA240, 3B240, 4A240, 4B240, 4BA240, or 4BW240 cylinders; or any 3M, 3FM, or 4M cylinders with a marked test pressure of at least 25 bar (363 psig) or greater; meeting the following requirements:

(a) Each cylinder may be filled with not more than 5 kg (11.0 pounds) of the mixture, to a maximum filling density of not more than 80 percent of the water capacity;

(b) No cylinder may be equipped with an eduction tube or a fusible plug;

(c) No cylinder may be equipped with any valve unless the valve is a type approved by the Associate Administrator for Hazardous Materials Safety;

(d) Cylinders must be overpacked in a box, crate or other strong outside packaging conforming to the requirements of § 173.25 and arranged to protect each valve or other closing device from damage. Except as provided in paragraph (e) of this section, no more than four cylinders may be packed in a strong outside packaging. Each strong outside packaging with its closing device protection must be sufficiently strong to protect all parts of each cylinder from deformation or breakage if the completed package is dropped 1.8 m (6 feet) onto a nonyielding surface and impacted at the package's weakest point;

(e) Cylinders may be packed in strong wooden boxes with valves or other closing devices protected from damage, with not more than twelve cylinders in one outside wooden box. An outer fiberboard box may be used when not more than four such cylinders are to be shipped in one packaging. Valves must be adequately protected. Box and valve protection must be of strength sufficient to protect all parts of inner packagings and valves from deformation or breakage resulting from a drop of at least 1.8 m (6 feet) onto a nonyielding surface, impacting at the weakest point.

39. Section 173.336 would be revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification cylinders as prescribed in § 173.192. Specification cylinders prescribed in § 173.192 with valve removed are authorized. Each valve opening must be closed by means of a solid metal plug with tapered thread properly luted to prevent leakages. Transportation in DOT 3AL and 3ALM cylinders is authorized only by highway or rail. Each cylinder must be cleaned in compliance with the requirements of Federal Specification RR–C–901c, paragraphs 3.7.2 and 3.8.2. Cleaning agents equivalent to those specified in RR–C–901b may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or less and cleaned at the same time must be tested for oil contamination in accordance with Specification RR–C–901c paragraph 4.4.2.3 and meet the standard of cleanliness specified therein.

40. Section 173.337 would be revised to read as follows:

§ 173.337 Nitric oxide.

Nitric oxide must be packed in Specification 3A1800, 3AA1800, 3E1800, or 3AL1800 cylinders; or 3M, 3ALM, or 3FM cylinders with a marked test pressure of 200 bar (2900 psig) or greater filled to a pressure of not more than 52 bar (750 psi) at 21 °C (70 °F). Cylinders must be equipped with a stainless steel valve and valve seat which will not be deteriorated by contact with nitric oxide or nitrogen dioxide. Cylinders or valves may not be equipped with pressure relief devices of any type. Valve outlets must be sealed by a solid threaded cap or plug and an inert gasketing material. In addition—

(a) Transportation in 3AL or 3ALM cylinders is authorized only by highway or rail.

(b) Each cylinder must be cleaned in compliance with the requirements of Federal Specification RR–C–901c, paragraphs 3.7.2 and 3.8.2. Cleaning agents equivalent to those specified in RR–C–901c may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or less and cleaned at the same time must be tested for oil contamination in accordance with Specification RR–C–901C paragraph 4.4.2.3 and meet the standard of cleanliness specified therein.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

41. The authority citation for Part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

42. In § 177.840, paragraph (a)(1) would be revised to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(a) * * *

(1) *Cylinders.* Cylinders containing Class 2 (gases) materials shall be securely lashed in an upright position, loaded in racks, or packed in boxes or crates and securely attached to the motor vehicle to prevent the cylinders from being shifted, overturned or ejected from the vehicle. A cylinder containing a Class 2 material may be loaded in a horizontal position provided that the cylinder is designed so that the inlet to the pressure relief device is located in the vapor space and the cylinder is properly secured and lashed.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

43. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.3 [Amended]

44. In § 178.3, paragraph (a)(1) would be amended by removing the wording ''DOT 4B240ET'' and adding the wording ''DOT 3M'', in its place.

§ 178.35 [Amended]

45. In § 178.35, the following changes would be made:

a. In paragraph (b) introductory text, the wording ''§ 173.300b of this subchapter'' would be revised to read ''subpart I of part 107 of this chapter''.

b. In paragraph (b)(1), the wording ''§ 173.300a of this subchapter'' would be revised to read ''subpart I of part 107 of this chapter''.

c. In paragraph (e), the wording ''§§ 173.34 and 173.301'' would be revised to read ''§ 173.301''.

d. In paragraph (f)(2)(ii), the parenthetical wording ''(§ 178.44)'' and ''(§ 178.45)'' would be removed.

46. In addition, in § 178.35, paragraph (f)(3) would be revised to read as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(f) * * *

(3) *Marking exceptions.* A DOT 3E cylinder is not required to be marked with an inspector's mark or a serial number.

* * * * *

§§ 178.36, 178.37, 178.38, 178.39, 178.45 [Removed]

47. In subpart C, §§ 178.36, 178.37, 178.38, 178.39, and 178.45 would be removed.

48. In § 178.46(a)(4), in Table 2, the entry ''6351-T6'' would be removed and Table 1 would be revised to read as follows:

§ 178.46 Specification 3AL seamless aluminum cylinders.

(a) * * *

(4) * * *

TABLE 1.—ALUMINUM

[Heat or Cast Analysis for Aluminum; similar to ''Aluminum Association[1]'' Alloy 6061 Chemical Analysis in Weight Percent[2]]

Si min/max	Fe max	Cu min/max	Mn max	Mg min/max	Cr min/max	Zn max	Ti max	Pb max	Bi max	Other		Al
										Each max	Total max	
0.40/0.8	0.7	0.15/0.4	0.15	0.8/1.2	0.04/0.35	0.25	0.15	0.005	0.005	0.05	0.15	Bal.

[1] The ''Aluminum Association'' refers to ''Aluminum Standards and Data 1993'', published by the Aluminum Association Inc.
[2] Except for ''Pb'' and ''Bi'', the chemical composition corresponds with that of Table 1 of ASTM B221 for Aluminum Association alloy 6061.

* * * * *

§§ 178.50, 178.51 and 178.55 [Removed]

49. Sections 178.50, 178.51, and 178.55 would be removed.

§ 178.56 [Amended]

50. In § 178.56, paragraph (b) would be amended by revising the wording ''Table 1 of Appendix A to this part'' to read ''Table 1 of Appendix A to this subpart''.

§ 178.60 [Amended]

51. In § 178.60, paragraph (b) would be amended by revising the wording ''Table 1 of Appendix A to this part'' to read ''Table 1 of Appendix A to this subpart''.

§ 178.61 [Removed]

52. Section 178.61 would be removed.

§ 178.68 [Removed]

53. Section 178.68 would be removed.

54. Section 178.69 would be added to Subpart C to read as follows:

§ 178.69 Applicability and design criteria for all metric-marked DOT specification cylinders.

(a) *Applicability.* The definitions and general requirements prescribed in paragraphs (b) through (g) of this section apply to the manufacture of cylinders to the DOT 3M, 3ALM, 3FM and 4M specifications prescribed in §§ 178.70 through 178.81. The requirements for design qualification tests and production tests and verifications prescribed in paragraphs (h) and (i) of this section apply only when required by the individual specification. All specification requirements are minimum requirements.

(b) *Definitions.* For purposes of this subpart—

Associate Administrator means the Associate Administrator for Hazardous Materials Safety.

Design qualification tests means a series of tests, including the cycle, burst and puncture resistance test, that measure the structural integrity of a cylinder design or significant design change.

Heat treatment means heating and cooling a solid metal or alloy in such a way as to obtain desired conditions or properties. In addition:

(1) *Quench and temper heat treatment* means the process of heat treating and cooling cylinders by liquid quenching. The liquid must have a cooling rate of less than 80 percent of that of water. The temperature on quenching shall be appropriate for the material of construction but may not exceed 957°C (1750°F).

(2) *Normalizing heat treatment* means heating a ferrous alloy to a suitable temperature above its transformation temperature, not to exceed 957°C (1750°F), and then cooling it in air to ambient temperature.

(3) *Annealing heat treatment* means heating to and holding at a suitable temperature and then cooling to facilitate cold working.

(4) *Stress relieving heat treatment* means heating to a suitable temperature, holding long enough to reduce residual stresses and then cooling slowly enough to minimize the development of new residual stresses.

Lot means a group of cylinders successively produced in a work shift of not more than 10 hours of continuous operation having—

(1) The same specified size and configuration, within the parameters of ''significant change'' to an original design as defined in this section;

(2) The same specified material of construction (i.e. cast or heat);

(3) The same process of manufacture; and

(4) Been subjected to similar conditions of time, temperature, cooling rate, and atmosphere during heat treatment.

Plugged cylinder is a cylinder with a permanent end closure achieved by the insertion of a threaded plug.

Proof pressure test means a pressure test by interior pressurization without the determination of the cylinder's expansion.

Settled pressure, (formerly referred to as service pressure) means the pressure of the contents of the cylinder at 15 °C (59 °F).

Significant change to an original design means—

(1) A 10 percent or greater change in cylinder wall thickness, test pressure or diameter;

(2) A 30 percent or greater change in water capacity or base thickness;

(3) Any change in specified material;

(4) An increase in the diameter of openings of over 100 percent; or

(5) Any change in the number of openings.

Spun cylinder is a cylinder with an end closure that has been welded by the spinning process.

Volumetric expansion test means a pressure test by interior pressurization to measure a cylinder's expansion by using the water jacket or direct expansion methods.

(1) *Water jacket method* means a volumetric expansion test to determine a cylinder's total and permanent expansion by measuring the difference between the volume of water the cylinder externally displaces at test pressure and the volume of water the cylinder externally displaces at ambient pressure

(2) *Direct expansion method* means a volumetric expansion test to calculate a cylinder's total and permanent expansion by measuring the amount of water forced into a cylinder at test pressure, adjusted for the compressibility of water, as a means of determining the expansion.

(c) *Inspection and analyses.* Inspection and analyses must be in compliance with the following:

(1) Inspections and verifications, as required, must be performed by a hazmat employee of an independent inspection agency that has been approved in writing by the Associate Administrator in accordance with § 107.803 of this chapter.

(2) Chemical analyses and tests must be made in the United States or at a facility located outside the United States that is approved in writing by the Associate Administrator in accordance with § 107.807 of this chapter and under the supervision of an independent inspection agency approved under § 107.803 of this chapter.

(d) *Authorized material and material identification.* (1) Material of construction must be of uniform quality.

(2) Materials with seams, cracks, laminations or other defects likely to weaken the finished cylinder may not be used.

(3) Materials must be identified with the heat or cast code by a suitable method during manufacture. If the heat or cast identification is permanently stamped on the cylinder, it must be stamped in an area other than the sidewall of the cylinder.

(e) *Duties of the inspector.* The inspector shall determine that each cylinder conforms to the requirements in this section and the applicable individual specification. In making these determinations, the inspector shall:

(1) Verify that all procedures for obtaining and reporting the chemical analysis are in accordance with the appropriate requirements of ASTM Chemical Analysis Test Methods and that the chemical analysis is in conformance with the individual specification by—

(i) Obtaining a certified cast or heat analysis from the material producer, supplier, or from the cylinder manufacturer, for each heat or cast of material; or

(ii) Peforming or obtaining a check (solid metal) analysis, when such check analysis is required;

(2) Witness that the applicable design qualification tests prescribed in paragraph (h) of this section for each new cylinder design or a significant change to an original design have been performed with satisfactory results;

(3) Select samples for all tests;

(4) Select samples for the check analysis, when performed;

(5) Verify that identification of material is proper;

(6) Verify that the manufacturer makes a complete internal inspection of the cylinder body before closing the ends;

(7) Verify that wall thickness was measured and that the specified minimum thickness is met;

(8) Verify that the heat treatment is proper;

(9) Witness each test (except that results of the hardness test and the grain size test may be verified);

(10) Verify by gauge that threads are in conformance with the specification;

(11) Verify that each cylinder is marked in accordance with the applicable specification;

(12) Verify that gauges and test equipment are properly calibrated;

(13) Prepare a report containing, at a minimum, the information required by the applicable provisions of this subpart and the information listed in CGA Pamphlet C–11 and provide the report to the manufacturer and, upon request, to the purchaser. The inspector must retain the reports required by this section and the applicable individual specification for 15 years from the original test date on the cylinder. Each report must be legible and in English; and

(14) Certify that all cylinders represented by the test report meet all applicable requirements of the specification through inspection, verification, or any other action required to assure compliance.

(f) *Threads.* Threads must conform to the following:

(1) Each thread must be clean cut, even, without checks and to gauge.

(2) Taper threads must conform to one of the following—

(i) American Standard Pipe Thread (NPT) type must conform to the requirements of Federal Standard H–28, Section 7 (FED–STD–H28/7A);

(ii) National Gas Taper thread (NGT) type must conform to the requirements of Federal Standard H–28 Sections 7 (FED–STD–H28/7A), and 9 (FED–STD–H28/9A);

(iii) Other taper threads conforming to other standards may be used provided the total thread shear strength is not less than that specified for NPT threads.

(3) Straight threads must conform to one of the following—

(i) National Gas Straight Thread (NGS) type must conform to the requirements of Federal Standard H–28, Sections 7 (FED–STD–H28/7A), and Section 9 (FED–STD–H28/9A);

(ii) Unified Thread (UN) type must conform to the requirements of Federal Standard H–28, Section 2 (FED–STD–H28/2B);

(iii) Controlled Radius Root Thread (UNJ) type must conform to the requirements of Federal Standard H–28, Section 4 (FED–STD–H28/4);

(iv) Other straight thread types conforming to other standards may be used provided the requirements of paragraph (f)(4) of this section are met.

(4) All straight threads must have at least 4 engaged threads, a tight fit, and calculated shear strength of at least 10 times the shear stress at the test pressure of the cylinder. Shear strength must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28 Section 2, Appendix B (FED–STD–H28/2B Appendix B). Gaskets are required to prevent leakage.

(g) *Pressure relief devices and protection for valves, pressure relief devices, fittings and connections.* (1) Pressure relief devices on cylinders must conform to the requirements of § 173.301(f) of this subchapter.

(2) Protection for valves, pressure relief devices, fittings and connections must conform to the requirements of § 173.301(h)(2) of this subchapter.

(h) *Design qualification tests.* Each cylinder design and each cylinder design having a ''significant change'' from the original design must be subjected to the design qualification tests prescribed in this paragraph (h).

(1) *Cycle test.* The cycle test must be performed on a cylinder after it has passed the volumetric expansion test, by subjecting it to successive hydraulic pressurization and depressurization cycles. The rate of cycling may not exceed 10 cycles per minute.

(i) The lower cyclic pressure may not exceed 10 percent of the upper cyclic pressure. The upper cyclic pressure must be at least equal to the prescribed minimum test pressure.

(ii) The test cylinder must be subjected to a pressure exceeding 90 percent of the upper cyclic pressure for at least 20 percent of the duration of each cycle.

(iii) The cycle test must be performed on at least three representative samples of each design or any significant change to an original design.

(iv) All cylinders used in the cycle test must be rendered incapable of holding pressure following completion of the cycle test.

(2) *Burst test.* The burst test must be performed on a representative completed cylinder selected at random after heat treatment by hydraulically pressurizing the cylinder to failure. The rate of pressurization may not exceed 14 bar (200 psi) per second. Burst testing of each design or any significant change to a previously tested design must be performed on at least 3 representative cylinders.

(3) *Puncture resistance test.* Each cylinder design type intended for the transportation of Division 2.3 gases or Division 6.1 liquids in Hazard Zones A and B must pass the following test. Cylinders that are shipped in an overpack must be tested in the overpack.

(i) The puncture resistance test must be performed on three representative cylinders selected at random after heat treatment. The cylinder must be filled with water and pressurized to ⅔ the marked test pressure at 21° C (70° F). The cylinder must be tested on its sidewall, supported on an unyielding support and tied down so that there is no movement during impact. The puncturing probe must consist of a 2 inch x 2 inch x ¼ inch angle iron, its end sawed off at 90° to form a sharp corner. The probe must have a weight attached that is equivalent to the weight of the cylinder including the heaviest material to be shipped. The probe must be dropped from a minimum height of 2.1m (7 feet) from the top surface of the cylinder, perpendicular to the cylinder's longitudinal centerline, and must impact the cylinder sidewall on the top of the cylinder. The sharp corner of the angle iron must impact the centerline of the cylinder. (See Figure 1 of this section.)

(ii) There must be no leakage as a result of the impact. The cylinder must be leak tested, using compressed gas charged to 2/3 of the marked test pressure.

(4) *Acceptable test results.* Acceptable design qualification test results are as prescribed in the individual cylinder specification.

(i) *Production tests and verifications.* When the individual specification requires a particular production test to be performed, the test must be conducted on the finished cylinder as prescribed in this paragraph (i). Unless otherwise noted in this section, acceptable test results are prescribed in the individual cylinder specification. Any lot not meeting acceptable test results must be rejected:

(1) *Flattening or bend test.* Flattening or bend tests must be performed, on a representative completed cylinder selected at random or, if authorized by the individual specification on a test ring, after heat treatment. Each test ring used for the test must meet the requirements of paragraph (i)(7) of this section.

(i) During the flattening test, the cylinder or test ring must be flattened between wedge-shaped knife edges with the longitudinal axis of the cylinder at approximately 90 degrees to the knife edges. For steel and nickel cylinders, the knife edges must have a 60 degree included angle and be rounded to a 13 mm (1/2 inch) radius. For aluminum cylinders, see § 178.72(i)(4).

(ii) A bend test in accordance with ASTM E 290 may be substituted for the flattening test. Two test pieces cut from a sidewall ring or rings shall be tested. The width shall be the greater of 25 mm (1 inch) or four times the thickness of the test specimen. A load shall be applied to the inside surface of the test piece by a mandrel at the mid-length until the interior edges are no further apart than the mandrel diameter. For steel cylinders the mandrel shall not be greater than four times the actual wall thickness.

(iii) For a cylinder with a water capacity of 454 kg (1,000 pounds) or less, the flattening or bend test must be performed on a cylinder selected from each lot.

(iv) For a cylinder with a water capacity exceeding 454 kg (1,000 pounds), the flattening or bend test must be performed on a cylinder or on a test ring out of each lot when cylinders are heat treated in a batch furnace, or from one cylinder or test ring out of each four hours or less of production when the cylinders are heat treated in a continuous furnace.

(v) A retest using one additional set of specimens is authorized if a test was considered improper due to the presence of a fault in the equipment or specimen preparation. Retest specimens must be taken from this same cylinder if space permits or from another randomly selected cylinder in the same lot.

(2) *Grain size.* For cylinders made from nickel, preparation and examination of the specimen and grain size calculation must be as prescribed in ASTM E 112.

(3) *Hardness test.* Apparatus and procedures must be in conformance with ASTM E 18 for Rockwell C scale (HRC) hardness number or ASTM E 10 for Brinell hardness number (HBS).

(4) *Impact test.* The impact test must be performed on specimens taken from the cylinder or, if authorized by the individual specification, from a test ring, after heat treatment. Each test ring used for the test must meet the requirements of paragraph (i)(7) of this section. Impact specimens must be prepared and tested in accordance with ASTM E 23 and the specific requirements in the individual specification. A cylinder or a test ring need represent only one of the heats in the lot, provided the other heats in the lot were heat treated under the same conditions and have previously been tested and have passed the tests.

(i) For a cylinder with a water capacity of 454 kg (1,000 pounds) or less, the specimens must be taken from one cylinder or test ring out of each lot.

(ii) For a cylinder with a water capacity exceeding 454 kg (1,000 pounds), the specimens must be taken from one cylinder or test ring out of each batch when cylinders are heat treated in a batch furnace, or from one cylinder or test ring out of each 4 hours or less of production when cylinders are heat treated in a continuous furnace.

(5) *Leakage test.* Spun cylinders must be tested for leakage by subjecting the inside of the finished bottom to a

pressure of not less than ½ of the cylinder's marked test pressure. The bottom must be clean and free from all moisture. Pressure must be applied, using dry gas, over an area of at least six percent of the total area of the bottom but not less than 19 mm (¾ inch) in diameter including the closure. The required pressure must be applied for at least one minute, during which time the outside of the bottom under test must be covered with water or other suitable leak detecting fluid and closely examined for indication of leakage. The leakage test must be performed prior to the closing of the cylinder. The cylinder may not show any evidence of leakage.

(6) *Magnetic particle and liquid penetrant examinations.* The apparatus and procedures for the magnetic particle examination, wet or dry method, must conform to ASTM E 709. The apparatus and procedures for the liquid penetrant inspection must conform to ASTM E 165.

(7) *Mechanical tests.* Unless otherwise specified in the individual cylinder specification, a mechanical test must be performed on a minimum of two specimens taken at least 160 degrees apart from a representative completed cylinder which is selected at random after pressure testing and heat treatment. For cylinders more than 2 meters (6.5 feet) long, the mechanical test may be performed on a test ring which has been heat treated with the completed cylinders. The test ring must be at least 61 cm (24 inches) long and must have its ends covered during heat treatment so as to simulate the heat treatment process of the finished cylinder it represents. Each test ring used for the test must be of the same specification material, diameter and thickness as the finished cylinder it represents. A test cylinder or test ring need represent only one of the heats in the lot provided the other heats in the lot have previously been tested and have passed the tests.

(i) Specimens must conform to the following:

(A) The long axis of the specimen must be parallel to the longitudinal axis of the cylinder.

(B) The tensile specimen reduced section may not be flattened. However, the grip ends may be flattened to within 25 mm (1 inch) of each end of the reduced section.

(C) Temperatures generated during the preparation of a specimen may not exceed 204 °C (400 °F) for steel or nickel, or 121 °C (250 °F) for aluminum.

(ii) The tensile strength, yield strength, and elongation of the material must be determined as follows:

(A) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(B) For steel and nickel, the yield strength must be determined by the ''offset'' method or the extension under-load method described in ASTM E 8. For aluminum material, the yield strength must be determined by the ''offset'' method or the extension under load method as described in ASTM B 557.

(C) The cross-head speed of the testing machine may not exceed 3 mm (⅛ inch) per minute during the determination of yield strength, however, any test speed may be used until one-quarter of the specified tensile strength is reached.

(D) The specimens must be taken from one cylinder selected from each lot.

(E) When the length of the cylinder does not permit securing straight specimens, then specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. The inspector's report must indicate that the specimens were taken and prepared in this manner.

(F) The size of the specimen must be one of the following—

(*1*) gauge length of 50 mm (2 inches) and a maximum width of 38 mm (1.5 inches);

(*2*) gauge length of 200 mm (8 inches) and a maximum width of 38 mm (1.5 inches); or

(*3*) gauge length of at least 24 times specimen actual thickness and a maximum width of 6 times actual thickness, provided that the cylinder wall is not over 4.7 mm (3⁄16 inch) thick.

(G) For a cylinder with a water capacity exceeding 454 kg (1,000 pounds):

(*1*) The specimens must be taken from one cylinder or test ring out of each batch when cylinders are heat treated in a batch furnace or from one cylinder or test ring out of each 4 hours or less of production when cylinders are heat treated in a continuous furnace.

(*2*) The size of the specimen must be as prescribed in the individual specification.

(iii) A retest using one additional set of specimens is authorized if a test was considered improper due to a fault in the equipment or specimen preparation. Retest specimens must be from the same cylinder if space permits, or from another randomly selected cylinder from the same lot.

(8) *Mechanical tests of welds.* (i) Tensile test: Specimens must be prepared in accordance with and meet the requirements of CGA Pamphlet C–3. Should any specimen from the first test fail to meet the requirements, a second test may be performed taken from three additional cylinders selected at random from the same lot. If either of the additional specimens fails to meet the requirements of CGA Pamphlet C–3, the entire lot must be rejected.

(ii) Guided bend test: Specimens must be prepared in accordance with and meet the requirements of CGA Pamphlet C–3.

(iii) Alternate guided-bend test: This test may be used as an alternative to the guided bend test specified in paragraph (i)(8)(ii) of this section and must be performed in accordance with CGA Pamphlet C–3. The specimen shall be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gauge lines—''a'' to ''b'', shall be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 340 MPa (50,000 psi), as provided in table 4 of § 178.81.

(9) *Production burst test.* When required by a particular specification, must be performed on at least one cylinder from each lot. A cylinder used in the cycle test may be used for the production burst test. If a cylinder fails the production burst test, a second sample of three cylinders from the same lot must be selected by the independent inspector. If any of these tested cylinders fail, the lot must be rejected.

(10) *Proof pressure test.* The pressure for the proof pressure test must be at least equal to the marked test pressure and must be maintained for at least ten seconds, and sufficiently longer, as necessary, to assure there is no leakage and no drop in pressure. The cylinder may show no evidence of leakage or distortion.

(11) *Radiographic examination.* Radiographic examination of cylinders must conform to the techniques and acceptability criteria set forth in CGA Pamphlet C–3. When fluoroscopic examination is used, permanent film records need not be retained.

(12) *Ultrasonic examination.* The ultrasonic examination must be performed on the cylindrical section of the completed cylinder after it has passed the volumetric expansion test. Testing must be in accordance with Appendix B of this subpart.

(13) *Volumetric expansion test.* After heat treatment, each cylinder must be subjected to an internal pressure at least equal to the marked test pressure. The water jacket method must be performed in accordance with paragraph 4 and Appendices A and B of CGA Pamphlet C–1. An alternative test procedure, such as direct expansion, may be used when

approved in writing by the Associate Administrator. If the required test pressure can not be maintained due to failure of test apparatus, the cylinder must be rejected or the test must be repeated at a pressure increased by 10 percent of the test pressure or 7 bar (100 psi) whichever is lower. Only two retests are authorized. The permanent expansion measured at zero gauge pressure may not exceed 10 percent of the total measured expansion at test pressure.

(j) *Rejected cylinders.* When a lot of cylinders is rejected, and reheat treatment may correct the cause of rejection, the lot may be reheat treated and retested as if it were a new lot.

(1) Volumetric expansion test: Reheat treatment of rejected cylinders that failed due to excessive permanent expansion is authorized.

(2) Magnetic particle, liquid penetrant and ultrasonic examinations: Any cylinder rejected because of cracks may not be requalified.

(k) *Markings.* Required markings on the cylinder must be in accordance with the following:

(1) Each cylinder must be legibly and permanently marked by stamping on the shoulder, top head or neck. The depth of marking must ensure that the wall thickness measured from the root of the stamping to the interior surface is equal to or greater than the prescribed minimum wall thickness.

(2) For a DOT–4M specification cylinder the required markings must be stamped plainly and permanently on the shoulders, top head, neck, valve boss, valve protection sleeve, collar, or similar part permanently attached to the top of the cylinder. For cylinders that do not exceed 11.3 kg (25 pounds) water capacity, the marking may be on the footring permanently attached to the cylinder.

(3) The required markings specified in this paragraph (k) (3) must be stamped on the cylinder in the sequence shown in items 1 through 12, with no additional information interspersed, as illustrated in the following example:

DOT–3M/USA/M1234/SN123456/UT/200BAR/IA01/98–09/250/5.8/SS/56.5

Where:

1. DOT 3M = DOT specification number.
2. USA = country of manufacture.
3. M1234 = symbol of manufacturer assigned by the Associate Administrator.
4. SN123456 = manufacturer's serial number.
5. UT = stamp for non-destructive ultrasonic examination, if applicable.
6. 200BAR = test pressure (bar).
7. IA01 = Independent Inspection mark.
8. 98–09 = date of test (year and month).
9. 250 = water capacity (liters).
10. 5.8 = minimum guaranteed wall thickness (millimeters).
11. SS = identification of alloy (SS:stainless steel, NI:Nickel, AL: Aluminum CS: Carbon Steel).
12. 56.5 = tare weight (kilograms).

(4) Required markings must be at least 6 mm (0.250 inch) high, except that cylinders having an inside diameter less than 102 mm (4 inches) may have markings that are at least 3 mm (0.116 inch) high.

(5) Stamping on the side wall is prohibited.

(6) No other markings may conflict with the required markings.

(7) Other variations in stamping required marks is authorized only when necessitated by lack of space or as approved in writing by the Associate Administrator.

(l) *Coatings.* Coatings on a cylinder's exterior or interior walls are authorized, except that the coating must not cause markings to be illegible, obscure defects, or allow moisture to be trapped between the cylinder wall and the coating. Any coating that may prevent adequate visual inspection or ultrasonic examination is prohibited.

BILLING CODE 4910–60–P

Figure 1 to § 178.69

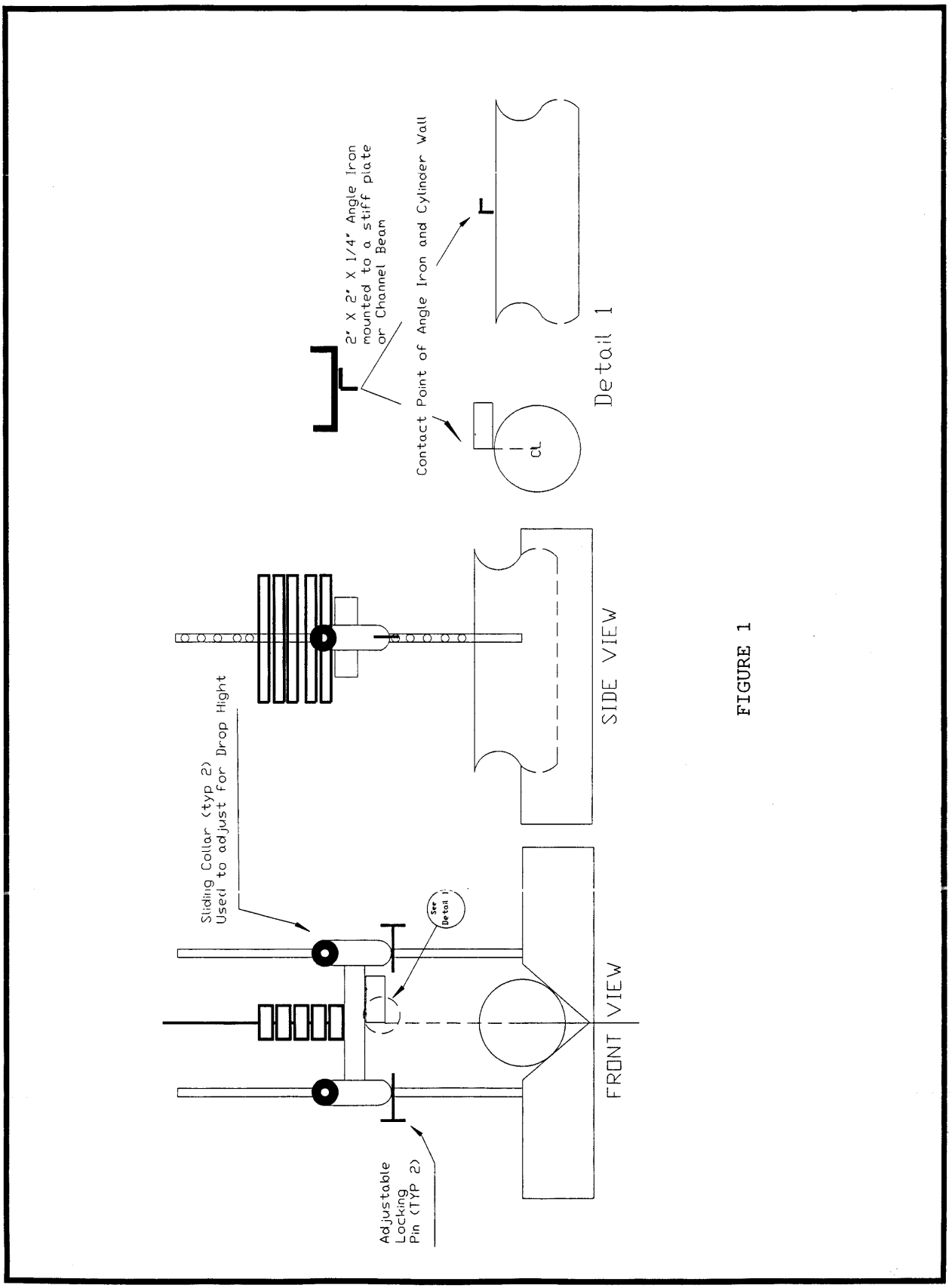


FIGURE 1

55. Section 178.70 would be added to Subpart C to read as follows:

§ 178.70 General requirements for DOT 3 series metric-marked seamless cylinders.

(a) DOT specifications 3M (§ 178.71), 3ALM (§ 178.72), and 3FM (§ 178.73) cylinders must meet the requirements contained in this section, § 178.69, and the requirements of the applicable individual specification contained in §§ 178.71 through 178.73.

(b) *Lot size.* In no case may a lot exceed 200 cylinders, but any cylinder processed for use in the required destructive testing need not be counted as being one of the 200.

(c) *Authorized material and identification of material.* All tubing, billet, sheet, plate or cast stock must be in conformance with one of the specifications in Table 1 or 2 of Appendix A of this subpart. The inspector may require a check analysis to establish the heat or cast analysis when necessary to meet the requirements of § 178.69(c)(2). The material may not be used if the results of such analysis indicates nonconformance with the requirements of the material specification.

(d) *Manufacture.* (1) Each cylinder must be of seamless construction with integrally formed heads and bottoms.

(2) The manufacturing process must be capable of producing a cylinder that is free from defects likely to weaken the finished cylinder. For a cylinder with a water capacity of more than 454 kg (1000 pounds), permanent closures formed by spinning are prohibited and integral heads must be concave to pressure.

(3) Dirt and scale must be removed to permit proper inspection. Each cylinder must have a smooth and uniform finish. Fissures, laps, tears, or other defects that are likely to weaken the finished cylinder are not acceptable. The thickness of the treated areas must be measured and may not be less than the prescribed minimum sidewall thickness. Machining or other treatment of the cylinder to eliminate defects must be completed before heat treatment and volumetric expansion testing.

(4) Head and bottom configurations must be as follows:

(i) Bottoms of bumped-back cylinders must have a minimum thickness of not less than two times the prescribed minimum sidewall thickness. Such bottom thickness must be measured within an area bounded by a line representing the points of contact between the cylinder and the floor when the cylinder is in a vertical position.

(ii) For heads and bottoms concave to pressure, the inside shape must be hemispherical, ellipsoidal, or torispherical with a major to minor axis not exceeding 2 to 1, or a dished shape falling within these limits. Such heads and bottoms must be at least the prescribed minimum wall thickness of the cylindrical shell, except as follows:

(A) The thickness at the point of closure of spun cylinders must be at least 2 times the prescribed minimum sidewall thickness.

(B) The thickness of the hemispherical bottoms on cylinders formed from sheet or plate must be at least 90 percent of the prescribed minimum sidewall thickness.

(5) Welding or brazing for any purpose is prohibited on cylinders manufactured in accordance with this section.

(6) Plugged cylinders are not authorized.

(e) *Wall thickness.* The following requirements apply:

(1) The minimum wall thickness for a cylinder must be the greater of the thickness as determined by this paragraph (e), or as required by the individual specification.

(2) For the minimum wall thickness calculations, the following formula must be used:

$S = [P(1.3D^2+0.4d^2)]/(D^2 - d^2)$

Where:

S = Wall stress in Mpa (psi).
P = Minimum test pressure in bar (psi), as prescribed for the volumetric expansion test, but not less than 31 bar (450 psi).
D = Outside diameter in mm (inches).
d = Inside diameter in mm (inches).

(3) A steel cylinder longer than 2 meters (6.5 feet) must meet the following additional requirements if the cylinder is horizontally supported at its two ends. The load of the cylinder consists of the weight per unit length, in newtons per millimeter, of the cylindrical portion filled with water and pressurized to the prescribed minimum test pressure. The wall thickness must be increased when necessary to meet the following requirements:

(i) The sum of 2 times the maximum tensile stress at the mid-point of the unsupported length, due to bending (see paragraph (e)(3)(ii) of this section), plus the maximum longitudinal stress in the same area, due to the hydrostatic pressure (see paragraph (e)(3)(iii) of this section), may not exceed 80 percent of the minimum yield strength of the steel as determined by the mechanical tests prescribed in § 178.69(i)(7) and the applicable individual specification.

(ii) The following formula must be used to calculate the maximum tensile stress due to bending—

$S = MC/I$

Where:

S = tensile stress in MPa.
M = bending moment in newton-mm = $.125Wl^2$.
C=radius (D/2) of cylinder in mm.
I=Moment of inertia=$.04909 (D^4 - d^4)$ in mm^4.
W=weight in newtons per mm of cylinder length full of water.
l=length of cylinder in mm.
D=outside diameter in mm.
d=inside diameter in mm.

(iii) The following formula must be used to calculate the maximum longitudinal tensile stress due to volumetric expansion test pressure—

$S(MPa)=[A_1P/10A_2]$

Where:

S=tensile strength in MPa.
A_1=internal area in cross section of the cylinder in mm^2.
A_2=area of metal in cross section of the cylinder in mm_2.
P=volumetric expansion test pressure in bar.

(f) *Openings.* Openings are not permitted on the side wall and must be centered on the heads. Openings may not exceed the smaller of one-half of the cylinder's outside diameter or 200 mm (8 inches). All openings must be circular and threaded.

(g) *Heat treatment.* After forming, cylinders must be uniformly and properly heat treated under similar conditions of time, temperature, cooling rate and atmosphere prior to all tests. The furnace temperature must be controlled to assure a uniform process and have sufficient instrumentation to control performance.

56. Section 178.71 would be added to Subpart C to read as follows:

§ 178.71 Specification 3M; seamless steel, nickel and stainless steel metric-marked cylinders.

(a) *General requirements and test pressure.* Each DOT specification 3M cylinder must meet the general requirements contained in §§ 178.69 and 178.70 and the specific requirements contained in this section. The design test pressure must be no less than 15 bar (218 psi).

(b) *Duties of the inspector.* In addition to the duties prescribed in § 178.69(e), an inspector must verify that the grain size in a 3M cylinder manufactured from nickel is in accordance with paragraph (h)(6) of this section.

(c) *Authorized materials and identification of materials.* Materials must be in accordance with the following:

(1) All tubing, billet, sheet, plate or cast stock must be in conformance with

Grade A, C, or D material specified in Table 1 of Appendix A of this subpart.

(i) Grade A material is authorized for steel cylinders.

(ii) Grade C material is authorized for stainless steel cylinders.

(iii) Grade D material is authorized for nickel cylinders.

(d) *Manufacture.* Spun closures for nickel cylinders are prohibited.

(e) *Wall thickness.* (1) For cylinders with a test pressure less than 93 bar (1350 psi), the minimum wall must be such that the wall stress at the prescribed minimum test pressure does not exceed 165 MPa (24,000 psi) for cylinders made from Grade A or C material and in no case may the wall thickness be less than 2mm (.078 inch).

(2) For cylinders with a test pressure of 93 bar (1350 psi) or more, the minimum wall must be such that the wall stress at the prescribed minimum test pressure does not exceed the following:

(i) 380 MPa (55,000 psi) for cylinders made from Grade A material;

(ii) 235 MPa (34,000 psi) for cylinders made from Grade C material.

(3) For cylinders made from Grade D material, the minimum wall must be such that the wall stress at the prescribed minimum test pressure does not exceed 100 MPa (15,000 psi), or 50 percent of the minimum tensile strength as determined by the mechanical properties tests prescribed in § 178.69(i)(7).

(f) *Heat treatment.* A cylinder made from:

(1) Grade A material must be heat treated by normalizing at a metal temperature most suitable for the material, and air cooled. Liquid quenching is not authorized. Intermediate manganese steel may be given a quench and temper heat treatment.

(2) Grade C material does not require heat treatment.

(3) Grade D material does not require heat treatment. If the cylinder is heat treated, the furnace atmosphere during heat treatment must be sulfur-free and neutral or reducing.

(g) *Design qualification tests.* The following design qualification tests described in § 178.69 apply:

(1) *Cycle test.* Cylinders representative of the design must withstand, without distortion or failure, at least 10,000 pressurizations.

(2) *Burst test.* Representative cylinders of each design must meet the following—

(i) For nickel cylinders the test cylinders must withstand at least 2 times test pressure.

(ii) For steel cylinders the test cylinders must withstand at least 1.6 times test pressure.

(h) *Production tests and verification.* The following examinations and tests apply. Unless otherwise noted in this section, acceptable results are prescribed in § 178.69.

(1) Volumetric expansion test.

(2) Leakage test for spun cylinder.

(3) Ultrasonic examination in accordance with ASTM E 213 for measurement of sidewall defects: Any cylinder having a discontinuity greater than two times in length and 10 percent in depth of the designed minimum wall thickness or any discontinuity greater than 15% of the minimum designed wall thickness in depth must be rejected.

(4) Mechanical test: The yield strength may not exceed 73 percent of the tensile strength for steel cylinders, or 50 percent of the tensile strength for nickel cylinders. Elongation must be at least 20 percent for a 50mm (2-inch) gauge length specimen or at least 10 percent in other cases. In this instance, a flattening test or bend test is required. If elongation is at least 40 percent for the 50mm (2-inch) gauge length specimen, or at least 20 percent in other cases, a flattening test or bend test is not required.

(5) Flattening or bend test: Steel cylinders must withstand flattening to six times wall thickness without cracking; nickel cylinders must withstand flattening to four times wall thickness without cracking. Bend test specimens must be free of cracking when deformed around a mandrel not greater in diameter than 4 times the wall thickness for steel or 2 times the wall thickness for nickel.

(6) Grain size verification: For nickel cylinders, a specimen must be taken from the sidewall of a representative cylinder from each lot. The diameter of the average grain cross section may not exceed 0.065 mm (0.0026 inch). The corresponding ASTM micro-grain size number is 5.0. When the grain size in the test cylinder exceeds this limit, the lot must be rejected.

(7) Magnetic particle or liquid penetrant examination: Magnetic particle or liquid penetrant inspection must be performed on each cylinder constructed of intermediate manganese steel after heat treatment to determine the presence of quenching cracks. Cracked cylinders must be rejected.

(i) *Rejected cylinders.* Nickel cylinders, rejected for unacceptable grain size, may be reheat treated. Thereafter, the reheat treated cylinders must pass all prescribed tests including verification of acceptable grain size.

57. Section 178.72 would be added to Subpart C to read as follows:

§ 178.72 Specification 3ALM; seamless aluminum metric-marked cylinders.

(a) *General requirements.* Each DOT Specification 3ALM seamless aluminum cylinder must meet the general requirements contained in §§ 178.69, 178.70 and the specific requirements contained in this section.

(b) *Capacity.* The water capacity may not exceed 454 kg (1,000 pounds).

(c) *Duties of the inspector.* In addition to the duties prescribed in § 178.69(e), the inspector must verify compliance with the provisions in paragraph (d) of this section, either by inspection or by obtaining the material manufacturer's certificate of inspection.

(d) *Authorized material and identification of materials.* Only the aluminum alloy specified in Table 2 of Appendix A to this subpart is authorized. Material must be identified with the heat or cast code by a suitable method that will identify the alloy. Cast stock must have uniform isotropic grain structure not to exceed 500 microns maximum.

(e) *Manufacture.* Only the extrusion process is authorized. Closures formed by spinning are prohibited. The cylinder bottom must be concave to pressure. The thickness of the cylinder base may not be less than the side wall thickness. The bottom of the cylinder must have an inside shape that is torispherical, hemispherical or ellipsoidal, where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration, provided that—

(1) Any area of deviation is accompanied by an increase in base thickness;

(2) All radii of merging surfaces are equal to or greater than the knuckle radius; and

(3) Each design has been qualified by successfully passing the cycling and burst tests specified in paragraph (h) of this section.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the prescribed minimum test pressure does not exceed 80 percent of the minimum yield strength nor 67 percent of the minimum tensile strength of the cylinder material as determined by the mechanical properties tests prescribed in § 178.69(i)(7), but in no case may the minimum wall thickness be less than 4mm (0.156 inch).

(g) *Heat treatment*. Prior to any test, each cylinder must be subjected to a solution heat treatment and aging treatment appropriate for the type of aluminum used.

(h) *Design qualification tests*. The following design qualification tests described in § 178.69 apply:

(1) *Cycle test*. Cylinders representative of the design must withstand, without distortion or failure, at least 10,000 pressurizations to the prescribed minimum test pressure.

(2) *Burst test*. Cylinders representative of the design, must have a minimum burst of 1.6 times test pressure.

(i) *Production tests and verifications*. The following examinations and tests apply. Unless otherwise noted in this section, acceptable results are prescribed in § 178.69.

(1) Volumetric expansion test.

(2) *Ultrasonic examination*. The examination must be performed in accordance with ASTM E 213 for measurement of sidewall defects. Any cylinder having a discontinuity greater than two times in length and 5 percent in depth of the design minimum wall thickness must be rejected.

(3) *Mechanical tests*. Mechanical tests must be performed as follows: The two tensile specimens must be one of the following: Flat specimen, 50 mm (2-inch) gauge length; Flat specimen, 24t gauge length by 6t width; or Round specimen, 4D gauge length with diameter ''D''. When the cylinder sidewall is greater than 5 mm (3⁄16-inch), a retest without reheat treatment using this ''4D'' specimen is authorized if the test using the 2-inch specimen fails to meet elongation requirements. The 4D specimen must meet requirements of ASTM E 8. Tensile strength must be at least 260 Mpa (38000 psi). Yield strength must be at least 240 Mpa (35,000 psi). Elongation must be at least 14 percent for 50 mm (2-inch) gauge length specimen, at least 10 percent for 24t by 6t specimen, and at least 14 percent for the ''4D'' specimen.

(4) *Flattening and bend test*. A flattening or bend test must be performed as follows:

(i) The flattening test must be performed by placing the test cylinder between wedge-shaped knife edges having a 60 degree included angle, and rounded in accordance with the following table. The longitudinal axis of the cylinders must be at an angle of 90 degrees to the knife edges during the test. The test cylinder must withstand flattening to 9 times wall thickness without cracking. The table follows:

TABLE.—FLATTENING TEST

Cylinder wall thicknesses (inches)	Rounded radius (inches)
Under 0.150	0.500
0.150 to 0.249	0.875
0.250 to 0.349	1.500
0.350 to 0.449	2.125
0.450 to 0.549	2.750
0.550 to 0.649	3.500
0.650 to 0.749	4.125

(ii) An alternate bend test, in accordance with ASTM E 290 using a mandrel diameter not more than 6 times the wall thickness, is authorized. This test may be used to qualify a lot that has failed the flattening test. Reheat treatment is not required for this test. If used, this test must be performed on 2 samples from one cylinder taken at random out of each production lot. The test specimens shall remain uncracked when bent inward around a mandrel in the direction of curvature of the cylinder wall, until the interior edges are at a distance apart not greater than the diameter of the mandrel.

58. Section 178.73 would be added to Subpart C to read as follows:

§ 178.73 Specification for DOT 3FM; seamless steel metric-marked cylinders.

The construction of a cylinder to this specification also meets the requirement of draft ISO 9809–2, Transportation of Seamless Steel Gas Cylinders—Design Construction and Testing—Part 2: Quenched and Tempered Steel with Tensile Strength Greater Than or Equal to 1100 MPa.

(a) *General requirements and definitions*. Each Specification DOT 3FM seamless steel cylinder must meet the general requirements contained in §§ 178.69, 178.70 and the specific requirements contained in this section.

(b) *Authorized material and identification of materials*. All tubing, billet or cast stock must conform to Grade B or Grade E material specified in Table 1 of Appendix A of this subpart.

(c) *Manufacture*. Closures formed by spinning are prohibited.

(d) *Wall thickness*. The minimum wall thickness must be such that the wall stress at the prescribed minimum test pressure does not exceed the lesser of 483 Mpa (70,000 psi) for Grade B material or 624 MPa (90,500 psi) for Grade E material, or 67 percent of the minimum tensile strength as determined from the mechanical properties tests prescribed in paragraph 178.69(i)(7), but in no case may the minimum wall thickness be less than 1.5 mm (.058 inch).

(e) *Heat treatment*. Each cylinder must be suitably quench and temper heat treated and held at that temperature for a suitable period of time. Each cylinder must then be air cooled under conditions recommended for the steel. The minimum tempering temperature of the metal must be at least 570 °C (1058 °F).

(f) *Design qualification tests*. The following design qualification tests described in § 178.69 apply:

(1) *Cycle test*. Cylinders representative of the design must withstand, without distortion or failure, at least 10,000 pressurizations to the prescribed minimum test pressure.

(2) *Burst test*. Cylinders representative of the design, must have a minimum burst of 1.6 times the marked test pressure.

(g) *Production tests and verifications:* The following examinations and tests apply. Unless otherwise noted in this section, acceptable results are prescribed in § 178.69.

(1) Volumetric expansion test.

(2) *Ultrasonic examination*. The examination must be performed in accordance with ASTM E 213 for the measurement of sidewall defects. Any cylinder having a discontinuity greater than 24 mm (1 inch) in length and a depth greater than 5 percent of the design minimum wall thickness must be rejected.

(3) *Hardness test*. A hardness test must be performed on the cylindrical section of each cylinder after heat treatment. The tensile strength equivalent of the hardness number obtained from the test may not be more than 1,140 MPa (166,000 psi). The hardness number may not exceed 37 HRC or 344 HBS. If the hardness number is exceeded, then the lot must be rejected.

(4) *Mechanical tests*. (i) Specimen size must be gauge length 50 mm (2 inches) and a maximum width of 38 mm (1.5 inches). For cylinders over 454 kg (1,000 pounds) water capacity, specimens may be the Standard Round Tension Specimen as specified in ASTM A–370 (0.357 inches minimum diameter).

(ii) Elongation must be at least 16 percent for the 50 mm (2 inches) gauge length specimen. Tensile strength may not exceed 1,069 MPa (155,000 psi). For round specimens, the minimum elongation must be at least 15 percent.

(5) *Impact tests*. (i) Three specimens must be impact tested per lot. Each specimen must be taken from the sidewall of the cylinder or test ring. The axis of the specimen must be perpendicular to the longitudinal axis of the cylinder, with the axis of the notch in the ''T–L'' orientation as illustrated in figure 3 of ASTM E 399. Each specimen must be Charpy V-Notch type, size 10

mm (.40 inch)×5 mm (.20 inch) or 4 mm (.16 inch).

(ii) For cylinders over 454 kg (1,000 pounds) water capacity, the axis of the specimen must be parallel to the longitudinal axis of the cylinder, with the axis of the notch in the ''L–C'' orientation as illustrated in figure 3 in ASTM E 399. Each specimen must be Charpy V-Notch type, size 10 mm (.40 inch)×10 mm (.40 inch) if cylinder thickness permits. When only a reduced size specimen can be obtained, it must be the largest standard size obtainable but not smaller than 10 mm (.40 inch)×5 mm (.20 inch).

(iii) For cylinders constructed of Grade E material, the Charpy V-Notch impact properties for the three specimens must be tested at minus 50°C (minus 60°F), or colder; and the values obtained may be not less than the values shown in the following table. For cylinders constructed of Grade B material, the Charpy V-Notch impact properties for the three specimens must be tested at minus 50°C (minus 60°F), or colder; and the values obtained must not be less than the values shown in the following table:

	Size of specimen (mm)	Average value for acceptance for 3 specimens		Minimum value for acceptance for one specimen only of the 3 specimens	
		(ft-lb)	(j/cm^2)	(ft-lb)	(j/cm^2)
Grade B					
	10.0×10.0	25	42	20	34
	10.0×7.5	21	48	17	39
	10.0×5.0	17	58	14	47
Grade E					
	10.0×5.0	15	50	12	40
	10.0×4.0	12	40	9.5	32

59. Section 178.81 would be added to Subpart C to read as follows:

§ 178.81 Specification for DOT 4M; Welded metric-marked cylinders.

(a) *General.* DOT specification 4M cylinders must meet the requirements contained in this section and § 178.69.

(1) The design test pressure for DOT specification 4M cylinders must be less than or equal to 140 bar (2030 psi).

(2) [Reserved]

(b) *Lot size.* For cylinders manufactured under the provisions of this section, in no case may a lot size exceed 500.

(c) *Authorized materials and identification of materials.* For an aluminum cylinder only Aluminum Association alloy 5154 is authorized. For a steel cylinder, stock must conform to a material listed in Table 1 as follows:

Table 1

SPECIFICATIONS FOR STEEL AND STAINLESS STEEL USED FOR WELDED LOW PRESSURE CYLINDERS HEAT ANALYSIS

Chemical Composition in Weight Percent

Material Type	Carbon		Manganese		Phosphorus	Sulfur	Silicon		Chromium		Molybdenum		Copper	Nickel		Columbium		Titanium	Iron
	Min	Max	Min	Max	Max	Max	Min	Max	Min	Max	Min	Max	Max	Min	Max	Min	Max	Max	
HSLA Steel(Cb)	----	0.25	0.50	1.00	0.040	0.050	---	0.30	----	----	----	----	----	----	----	0.01	0.04	----	Balance
Carbon Steel[1]	----	0.25	----	1.25	0.045	0.050	---	----	----	----	----	----	----	----	----	----	----	----	Balance
4130X	0.25	0.35	0.40	0.60	0.035	0.025	0.15	0.35	0.80	1.10	0.15	0.25	----	----	----	----	----	----	Balance
Stainless[2] Steel	----	0.080	----	2.00	0.045	0.030	---	1.00	16.0	20.0	2.00[3]	3.00	----	8.0	15.0	----	----	----	Balance

Note 1: Other alloying elements may be added and shall be reported.
Note 2: DOT 4M stainless steel cylinder must be made from fully annealed sheet metal with a maximum tensile strength of 660 Mpa (95,000 psi).
Note 3: The minimum for molybdenum (2.00) shown, applies only to Stainless Steel type 316.

(d) *Manufacture.* (1) A DOT–4M specification cylinder must be manufactured only by a process specifically authorized by and conform to the applicable requirements of this section.

(2) The manufacturing process must produce cylinders that are free of defects which are likely to weaken the finished cylinder. Heads must be seamless, hemispherical or ellipsoidal in shape with the major diameter not more than two times the minor diameter, or a dished shape falling within these limits. For heads concave to pressure, the minimum head thickness may not be less than 90 percent of the required thickness of the sidewall. For heads convex to pressure, the minimum thickness must be not less than two times the required thickness of the sidewall. The bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position. For cylinders with a wall thickness less than 2.5 mm (0.100 inch), the ratio of tangential length to outside diameter may not exceed 4.0.

(3) Welding processes and machine operators shall meet qualification standards and comply with operating procedures specified in CGA Pamphlet C–3.

(i) Circumferential seams must be butt welded with one member offset (joggle butt) or lapped with minimum overlap of at least four times wall thickness. Other butt joints must be authorized in writing by the Associate Administrator. Fillet weld beads must be flat or convex and the leg of any fillet weld subjected to shear stress must be at least 1.3 times the shell wall thickness. For spheres, the maximum joint efficiency for design calculations is 0.85. Heat affected zones are considered to extend a distance of six times the wall thickness from the center line of the weld.

(ii) Longitudinal seams must have complete penetration, and must be free from undercuts, overlaps or abrupt ridges or valleys. Misalignment of mating butt edges must not exceed 0.166 of the wall thickness or 0.8 mm (0.031-inch), whichever is less. For cylinders with nominal wall thickness up to and including 3.2 mm (0.125 inch), joints must be tightly butted. When wall thickness is greater than 3.2 mm (0.125 inch), the joint must be gapped with maximum distance equal to one-half the wall thickness or 0.8 mm (0.031 inch) whichever is less.

(iii) The joint efficiency is 1.0, .90 or .75, as appropriate, for welded joint described in paragraph (i)(6) of this section.

(iv) The tensile strength of welded joints must be equal to or greater than the minimum required tensile strength of the shell material of the finished cylinder.

(v) Attachments may not be welded to the sidewall of the cylinder. Welding of attachments must be completed prior to all pressure tests and prior to heat treatment when required. Attachments must be made of weldable material of an alloy which is compatible with the cylinder. The carbon content for steel attachments may not exceed 0.25 percent.

(e) *Wall thickness.* The minimum wall thickness of a DOT 4M cylinder must be the greater of the thickness as determined by the following criteria:

(1) The minimum wall thickness for a carbon steel, HSLA steel or stainless steel cylinder with an outside diameter greater than 127 mm (5 inches) must be 2.0 mm (0.078 inch) and for an aluminum cylinder with an outside diameter greater than 127 mm (5 inches) must be 4 mm (0.156 inch).

(2) The minimum wall thickness for a carbon steel, HSLA steel or stainless steel cylinder with an outside diameter less than or equal to 127 mm (5 inches) must be 1.5 mm (.058 inch) and for an aluminum cylinder 2.5 mm (0.097 inch).

(3) Each cylinder must have a wall thickness such that the wall stress calculated at test pressure using the formula listed in paragraph (e)(4)(i) and (ii) of this section may not exceed the following allowable stresses at test pressure:

(i) For DOT 4M cylinders made from HSLA steel, 260 Mpa (37,000 psi).

(ii) For DOT 4M cylinders made from carbon steel, 165 Mpa (24,000 psi).

(iii) For DOT 4M cylinders made from aluminum alloy 5154, 138 Mpa (20,000 psi).

(iv) For DOT 4M cylinders made from 4130X steel, 255 Mpa (70,000 psi).

(v) For DOT 4M cylinders made from stainless steel cylinders, 410 Mpa (60,000 psi).

(4) For minimum wall thickness calculations, one of the following formula must be used:

(i) For cylinders that are cylindrical in shape:

$$S(MPa) = (P(1.3D^2 + .4d^2))/E(10(D^2 - d^2))$$

Where:

S = Wall stress in MPa.
P = Minimum test pressure in bar, as prescribed for the hydrostatic test.
D = Outside diameter in mm.
d = Inside diameter in mm.
E = Joint efficiency of the longitudinal seam.

(ii) For cylinders that are spherical in shape:

$$S(MPa) = PD / 40tE$$

Where:

S = wall stress in MPa.
P = Minimum prescribed test pressure in bar.
D = Outside diameter in mm.
t = Minimum wall thickness in mm.
E = weld efficiency factor.

(f) *Openings.* Openings must conform to the following:

(1) Openings are permitted in heads only. The opening must be circular or elliptical.

(2) Openings must be provided with adequate fittings, bosses or pads, integral with or securely attached to the cylinder by welding. Each fitting, boss or pad must be compatible with the cylinder material. Method of attachment must be the same as the method of construction.

(3) When more than one opening exists in the head or bottom of the cylinder, these openings must be separated by ligaments of at least three times the average of their hole diameters.

(g) *Heat treatment.* When a completed cylinder is required to be heat treated, each cylinder in a lot must be uniformly and properly heat treated under similar conditions of time, temperature, cooling rate and atmosphere prior to all tests. The furnace temperature for heat treatment must be controlled on a continuous basis by use of automated instrumentation to control performance.

(1) Heat treatment must follow all forming and welding operations.

(2) Each completed cylinder must be heat treated, as follows:

(i) Quench and temper heat treatment is authorized only for a DOT 4M cylinder made from 4130X steel.

(A) Tempering must be accomplished by reheating the quenched cylinder to a temperature below the transformation range, and holding at that temperature for at least one hour per 25 mm (1 inch) of thickness, based on the shell thickness of the cylinder. Each cylinder must then be air cooled under uniform conditions.

(B) The tempering temperature of the 4130X steel must be at least 538 °C (1000 °F).

(ii) Stress relieving heat treatment for HSLA steel and carbon steel cylinders must be at a temperature of at least 593 °C (1100 °F).

(iii) Normalizing heat treatment for HSLA steel and carbon steel cylinders must be at a temperature of at least 870 °C (1600 °F).

(iv) Heat treatment is not required for a stainless steel.

(v) For an aluminum alloy 5154 cylinder, heat treatment is not required.

(h) *Design qualification tests.* The following design qualification test described in § 178.69 apply. Burst test: five representative cylinders of each design, or any significant change to a previously tested design, must be burst tested. Each test cylinder must achieve the minimum burst pressure as specified in Table 2 of paragraph (i) of this section without leakage or rupture.

(i) *Production tests.* The following examinations and tests apply. Unless otherwise noted in this section, procedures and acceptable results are prescribed in § 178.69.

(1) *Pressure test.* Pressure testing must conform to the frequency, schedules and pressures as specified in Table 2 of this paragraph (i).

(2) *Leak test.* Each fully assembled cylinder must be subjected to a gas leakage test, using a dry inert gas, at one half the design test pressure while the cylinder is immersed in water, by coating it with a leak detecting solution, or by an alternate test method approved by the Associate Administrator. Table 2 follows:

TABLE 2

DOT spec.	Lot size	Volumetric [1] expansion test		Proof test pressure [3]	Minimum burst pressure [4]
		Test pressure(TP)	Maximum permitted PVE/TVE [2]		
4M [5]	500	As marked	10%	@ TP	2 x TP

[1] At least one cylinder per lot must be subjected to volumetric expansion test. If each cylinder is subjected to the volumetric expansion test the proof test is not required.
[2] PVE = permanent volumetric expansion; TVE = total volumetric expansion.
[3] Each cylinder must be proof tested at the TP.
[4] One cylinder per lot must be pressurized to destruction; minimum burst is expressed in multiples of TP.
[5] See §§ 173.302b and 173.304b of this subchapter for fill (service) pressure of DOT 4M cylinders.

(3) *Mechanical tests.* Mechanical tests must be taken from a minimum of two sample cylinders per lot selected at random after pressure test and heat treatment, if required. Test specimens must be taken as depicted in figures 1 through 5 of Appendix C of this subpart for the specific design utilized for construction.

(i) For cylinders and spherical shapes which are not of sufficient size to secure test specimens, an alternate testing protocol must be approved in writing by the Associate Administrator.

(ii) A test cylinder need represent only one of the heats of material of construction in the lot, provided that other heats in the lot have been tested and passed when heat treated under similar conditions.

(iii) If, due to welded attachments on the heads, there is insufficient surface from which to take specimens, specimens may be taken from a cylinder prepared as a test cylinder which does not have the attachments but is the same as the other cylinders in the lot and is heat treated with the lot it represents.

(iv) Minimum elongations are specified in Table 3 or Table 4 of this paragraph (i), as appropriate.

(v) *Acceptable results.* The yield strength may not exceed 73 percent of tensile strength for carbon steel and 80 percent of tensile strength for aluminum alloy 5154.

(4) *Flattening test.* A flattening test must be performed on a test cylinder selected from each lot. Cylinders must be flattened, without cracking, between knife edges as specified in § 178.69(i)(1) to six times the wall thickness for steel cylinders and ten times the wall thickness for aluminum cylinders. The minimum distance is to be measured between the knife edges or plates while the specimens are under compression. For spherical shapes, flattening is to be performed on a press, between parallel steel plates with the welded seam at right angles to the plates. Alternatively, a test ring cut from the sphere which includes the weldment and at least one inch of material on each side may be crushed between parallel steel plates with welded seam at right angles to the plates. Any projecting appurtenances may be removed prior to flattening. Removal must not produce a temperature exceeding 204 °C (400 °F).

(5) *Burst test.* For production testing one cylinder selected at random from each lot must be burst tested. Each test cylinder must achieve the minimum burst pressure as specified in Table 2 of this paragraph (i) without leakage or rupture.

(6) *Joint efficiency.* (i) The joint efficiency is 1.0 when all weld seams, both longitudinal and circumferential, are completely radiographically examined and defects removed. Weld repair areas must be reinspected to confirm that defects have been removed and the repaired area is of acceptable weld quality.

(ii) The joint efficiency is 0.90 when one cylinder from the first 10 production cylinders and one cylinder from each 100 consecutively welded cylinders thereafter are completely radiographically examined and show no defects. When defects are found in the sample cylinder all cylinders welded since the last acceptable sampling must be inspected completely and defects removed and repaired. When welding operations are suspended for more than four hours one cylinder must be inspected completely from the first 10 production cylinders after resumption of welding.

(iii) The joint efficiency is 0.75 when there is no radiographic weld examination.

(iv) A cylinder which is less than 21.4 kg (48 lbs) water capacity and test pressure less than 34.5 bar (500 psig) manufactured to a two piece design has a joint efficiency of 1.0 and requires no radiographic examination.

(v) Radiographic examination is required for DOT 4M cylinders constructed from 4130X steel and all DOT 4M cylinders with design test pressure equal to or greater than 70 bar (1015 psi). Radiographic examination must be performed on all welded joints which are subjected to internal pressure.

(vi) As an alternative to radiographic examination, an ultrasonic examination may be used in accordance with Appendix B of this subpart.

(7) *Mechanical test of welds.* Tests must be performed on specimens taken, as illustrated in Figure 1 through 5 of Appendix C of this subpart, from a cylinder chosen at random from each lot. Acceptable results:

(i) Tensile test results must meet acceptance criteria specified in CGA Pamphlet C–3 with specimen failure at a stress of not less than two times the wall stress at test pressure, calculated using the actual wall thickness.

(ii) Guided bend test results must meet acceptance criteria specified in CGA Pamphlet C–3.

(iii) Alternate guided bend test results must meet acceptance criteria specified in CGA Pamphlet C–3 and § 178.69(i)(8)(iii). Tables 3 and 4 follow:

TABLE 3.—ELONGATION

Material	Minimum elongation (in percent)		
	Gauge length × width ((50 mm x ≤38 mm)(2 inch x ≤1.5 inch))	Gauge length × width [1] ((200 mm × ≤38 mm)(8 inch × ≤1.5 inch))	Gauge length of 24t × Width [1] of 6t
Aluminum, alloy 5154	12	12	12
Steel (tensile strength <3447 MPA (50,000 psi))	40	20	20

Note 1: A gauge length of at least 24 times shell thickness and a width of not greater than six times shell thickness is authorized when cylinder wall is not greater than 4.7 mm (0.188 inch) thick.

TABLE 4.—ALTERNATE MINIMUM ELONGATION

Alternate minimum elongation (in percent)				
Shell tensile strength		Having tensile strength >3447 MPA (50,000 psi)		
MPA	PSI	Gauge length × width ((50 mm × ≤38 mm) (2 inch × ≤1.5 inch))	Gauge length × width [1] ((200 mm × ≤38 mm)(8 inch × ≤1.5 inch))	Gauge length of 24t × width [1] of 6t
≤3964	≤57500	38	19	19
≤4482	≤65000	36	18	18
≤5000	≤72500	34	17	17
≤5520	≤80000	32	16	16

Note 1: A gauge length of at least 24 times shell thickness and a width of not greater than six times shell thickness is authorized when cylinder wall is not greater than 4.7 mm (0.188 inch) thick.

(j) [Reserved]

(k) *Cylinder Rejection.* Each test cylinder or each lot represented by a test cylinder that does not meet the acceptable test results must be rejected. When a lot of cylinders is rejected, due to failure of the mechanical, flattening, or weld test, the lot may be reheat treated and retested as if it were a new lot. Reheat treatment is limited to two times.

(l) *Leakage test.* A spun cylinder rejected under paragraph (i)(2) of this section must be scrapped, condemned or rendered incapable of holding pressure.

(m) *Repairs.* A repair of weld seams is authorized using the same process as that used for the original welding. A rewelded cylinder must be reheat treated and pass all prescribed tests.

60. Appendices A, B and C would be added to Subpart C of Part 178 to read as follows:

Appendix A to Subpart C of Part 178—Specifications for Steel, Nickel and Aluminum

TABLE 1.—STEEL AND NICKEL—HEAT ANALYSIS—CHEMICAL COMPOSITION IN WEIGHT PERCENT

[For grades A–E, incidental elements to be within the limits specified in the AISI Manual 1for Semifinished Steel Products.]

Grade	Type of material	C min/max	Mn min/max	P max	S max	Si min/max	Cr min/max	Mo min/max	Ni min/max	B min/max	Fe
A	Carbon [3] Manganese	0.10/0.50	—/1.75	0.035	0.025	—/0.30					Bal.
B	Chrome Moly Type	0.25/0.50	0.40/1.05	0.035	0.025	0.15/0.35	0.80/1.15	0.15/0.25			Bal.
C	Stainless [2]	—/0.080	—/2.00	0.035	0.030	—/1.00	16.0/20.0	2.00/3.00	8.0/15.0		Bal.
D	Nickel								99.0/—		Bal.
E	Chrome [4] Moly Type	0.32/0.38	0.60/1.05	0.015	0.010	0.15/0.35	0.80/1.15	0.15/0.25			Bal.

[1] The AISI manual referenced in the heading means ''American Iron and Steel Institute'' Steel Products Manual—Alloy, Carbon, and High Strength Low alloy Steels; Semifinished: dated March 1986.
[2] The minimum for molybdenum (2.00) shown, applies only to Stainless Steel type 316.
[3] Forging or drawing quality steel required; rimmed steel not authorized.
[4] Forging or drawing quality steel required; produced to predominantly fine grain practice.

TABLE 2.—ALUMINUM—HEAT OR CAST ANALYSIS FOR ALUMINUM; SIMILAR TO ''ALUMINUM ASSOCIATION'' [1] ALLOY 6061 CHEMICAL ANALYSIS IN WEIGHT PERCENT [2]

Si min/max	Fe max	Cu min/max	Mn max	Mg min/max	Cr min/max	Zn max	Ti max	Pb max	Bi max	Other		Al
										Each max	Total max	
0.40/0.80	0.70	0.15/0.40	0.15	0.80/1.20	0.04/0.35	0.25	0.15	0.005	0.005	0.05	0.15	Bal.

[1] The ''Aluminum Association'' refers to ''Aluminum Standards and Data 1993'', published by the Aluminum Association Inc.

[2] Except for ''Pb'' and ''Bi'', the chemical composition corresponds with that of Table 1 of ASTM B221M for Aluminum Association alloy 6061.

MECHANICAL PROPERTIES

[Aluminum in conformance with the specification in Table 2 above, thermally treated to ''T6'' temper]

Tensile strength minimum (Mpa) [1]	Yield strength minimum (Mpa) [1]	Elongation, percent minimum, for 2 inch or 4D [2] size specimen
262	241	14 [3]

[1] MPA x 145 = psi.

[2] ''D'' represents specimen diameter. When the cylinder is over 3/16 inch thick, a retest without reheat treatment, using the 4D specimens is authorized, if the test using the 2 inch size specimen fails to meet elongation requirements.

[3] ''10 percent'' minimum elongation is authorized, when using a 24t x 6t test specimen if the cylinder sidewall is not over 3/16 inch thick.

Appendix B To Subpart C of Part 178—Ultrasonic Examination of Cylinders

Ultrasonic examination (UT) includes straight beam pulse echo testing that measures 100 percent of the cylinder's sidewall thickness and angle beam (shear wave) pulse echo that identifies and measures cracks, pits, laminations, laps, and other defects.

a. *UT equipment.* The UT equipment shall consist of a pulse-echo test instrument that is capable at a minimum, of generating, receiving, and presenting high energy pulses in an A-scan presentation on a display. It must have a minimum frequency of 1.0 MHZ and a minimum frequency range of 1.0 to 5.0 MHZ.

1. The UT equipment must continually monitor the acoustic coupling to assure 100% cylinder sidewall coverage during the testing and automatically terminate the testing if the coupling is lost. The equipment also must be capable of providing a linear presentation of crack depth. The equipment calibration must be verified for each type of cylinder to be examined using the calibration standard in paragraph b of this Appendix prior to testing. At a minimum, the equipment calibration must be verified at the beginning of each work shift, not to exceed 10 continuous hours.

2. The UT equipment must have multiple focused array transducers to perform both straight beam and angle beam testing of the cylinder sidewall and sidewall to base transition. A straight-beam search unit consists of a piezoelectric crystal mounted to a fixture that is perpendicular to the longitudinal axis of the cylinder. A shear wave search unit consists of piezoelectric crystals mounted to a fixture that are angled at 45° or 60° to the longitudinal axis of the cylinder sidewall. The frequency and angle of each search unit must be determined during calibration based on material, diameter, and wall thickness of the cylinder. A proper search unit must be selected to obtain a good resolution and a minimum accuracy of +/-5% of the defect depth. A search unit frequency of 2.25 MHZ to 10.0 MHZ must be used. The equipment used must be calibrated to detect a discontinuity 25.4 mm (1 inch) in length and a depth of 5 percent of the prescribed minimum wall thickness.

b. *Calibration standard.* A cylinder used as a calibration standard must be of the same diameter (+/−10%), surface finish, metallurgical type, and specification as the cylinders to be tested, for example, a DOT 3FM calibrated cylinder must be used for 3FM cylinders. The calibration cylinder must be machined with features that simulate defects such as pits, fatigue cracks, and reduced wall thickness. The size of the defect feature shall be approximately the same as the applicable pass-fail criteria identified in Table II of § 180.207 of this subchapter for requalification of metric-marked cylinders, as identified in Table II of § 180.209 of this subchapter for requalification of nonmetric-marked cylinders or as identified in the applicable cylinder specification. The minimum wall thickness and defect sizes in the calibration cylinder must be confirmed by mechanical measurements and certified by a non-destructive testing (NDT) Level III in UT. The size of the defect features in the calibration cylinder shall be measured every five years to confirm that the defect sizes have not been changed. A certification statement signed by a person certified to NDT Level III in UT must be maintained for each calibration standard and made available for review, upon request, by an authorized RSPA representative.

c. *Couplant.* The same couplant must be used for both calibration and actual testing.

d. *UT procedure and reporting requirements.* The UT procedure and reporting requirements used must be in accordance with ASTM E 797 for wall thickness measurement and ASTM E 213 for sidewall defect measurement. The UT program must be approved in writing by the Associate Administrator.

1. The surface of the cylinder to be inspected shall be free of extraneous loose material such as scale, loose paint, and dirt.

2. The rotational speed of the cylinder under examination may not exceed the rotational speed used during calibration.

3. The UT results must be evaluated in accordance with pass-fail criteria identified in Table II of § 180.207 of this subchapter for requalification of metric-marked cylinders, as identified in Table II of § 180.209 of this subchapter for requalification of nonmetric-marked cylinders or as identified in the applicable cylinder specification.

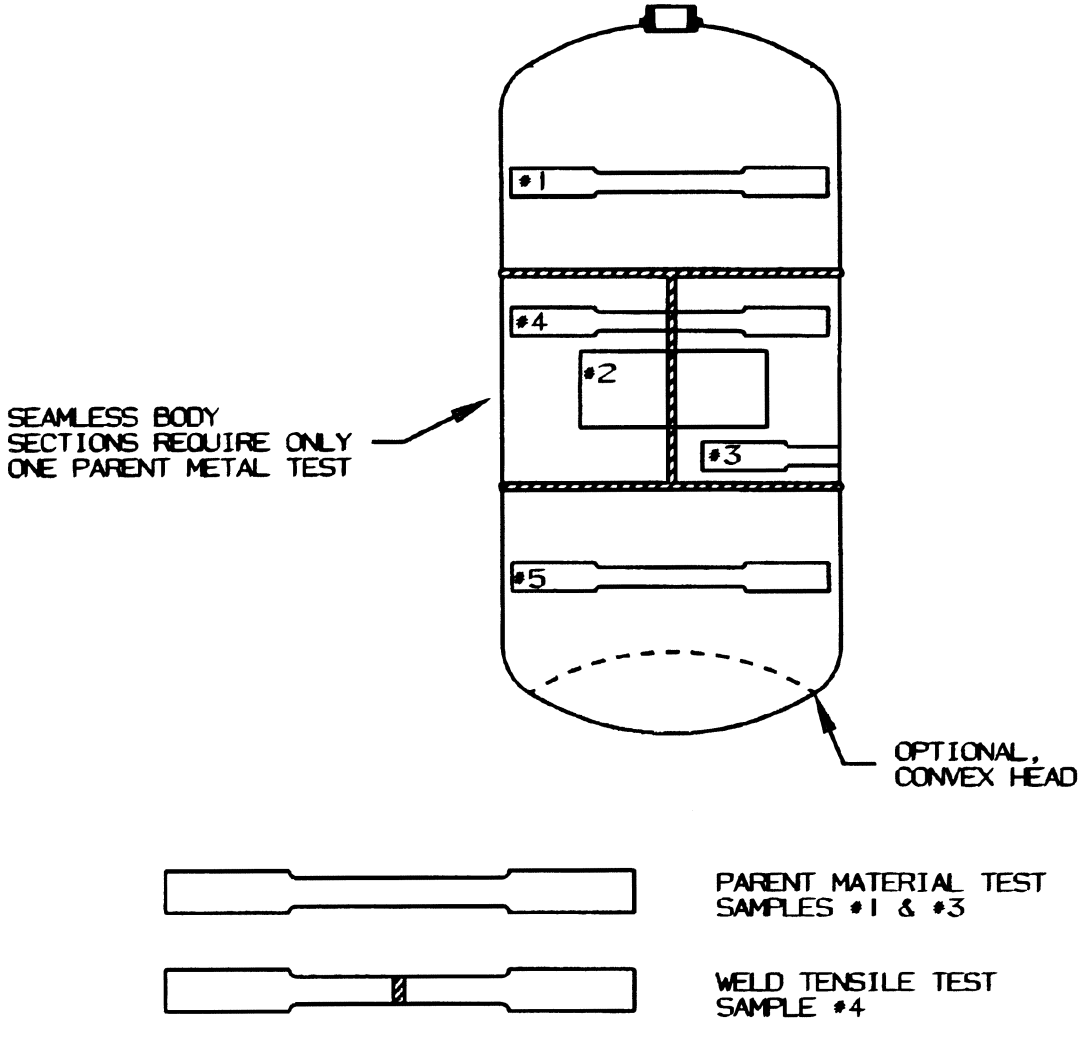
e. *Personnel Qualifications and Responsibilities:* Each facility where testing is to be performed must be under the managerial direction of a Senior Review Technologist (SRT).

1. The SRT must define the overall test program, provide supervisory training and technical guidance to operators, review and certify test results and maintain proof of qualifications for each ''qualified tester''. The SRT must have a Level III, UT Certification, in accordance with the ASNT Recommended Practice SNT–TC–1A and a thorough understanding of this subchapter pertaining to the qualification and use of DOT cylinders.

2. The person performing cylinder testing, the ''qualified tester'', must be at a minimum a qualified Level II, UT in accordance with ASNT–TC–1A. The ''qualified tester'' may perform system startup, calibrate the system, and review and validate the test results.

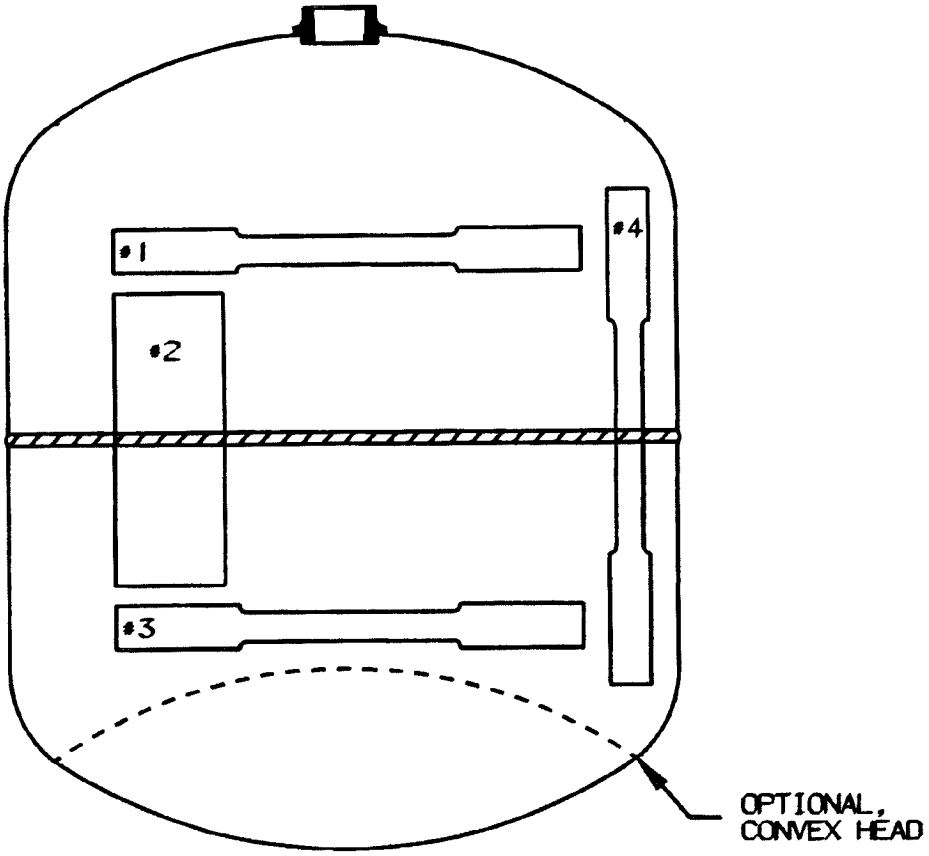
3. A person with Level I certification may perform a system startup, check calibration, and perform UT only under the direct guidance, supervision, and observation of a Level II or Level III Operator.

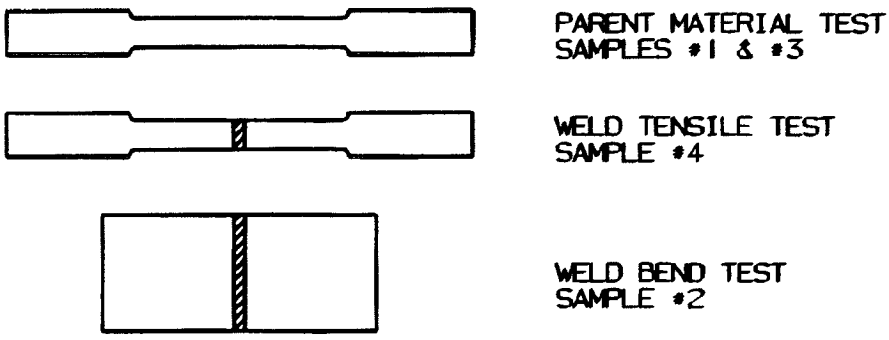
4. Each ''qualified tester'' must have written procedures for conducting UT, for operation of equipment, a copy of this subchapter, proof of qualifications, and records of all tests performed at the facility where testing is performed.



This Figure illustrates the proper tensile locations for a 3 piece cylinder with the heads having straight sidewall.

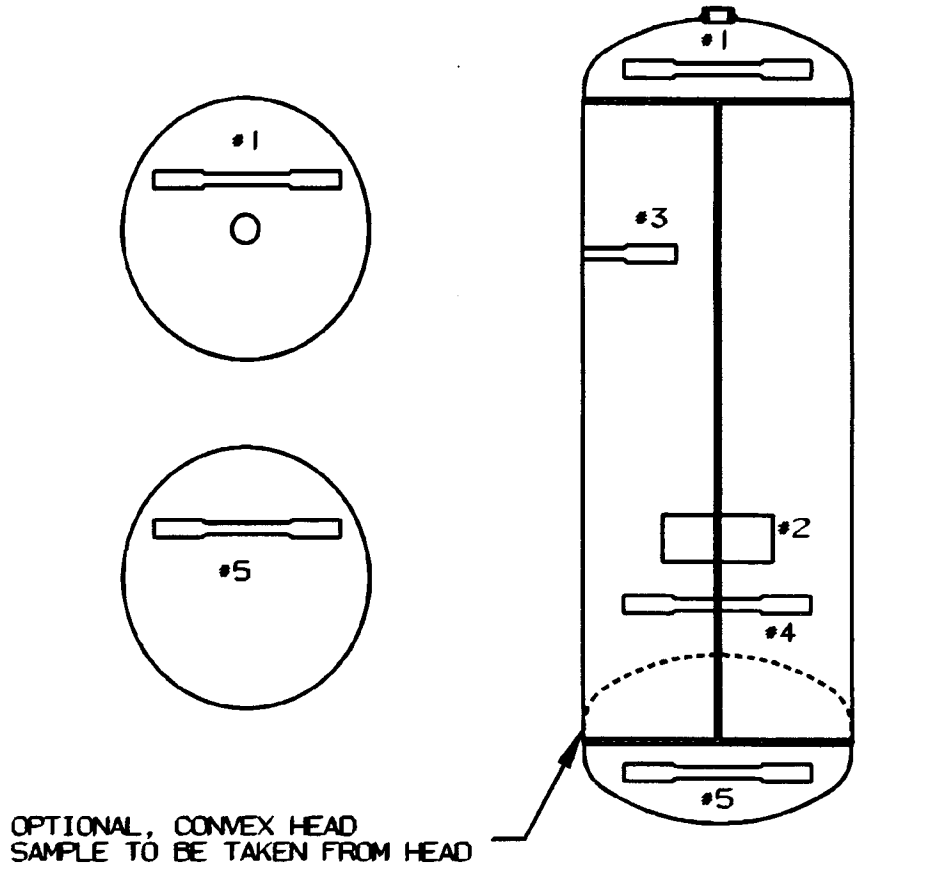
FIGURE #1

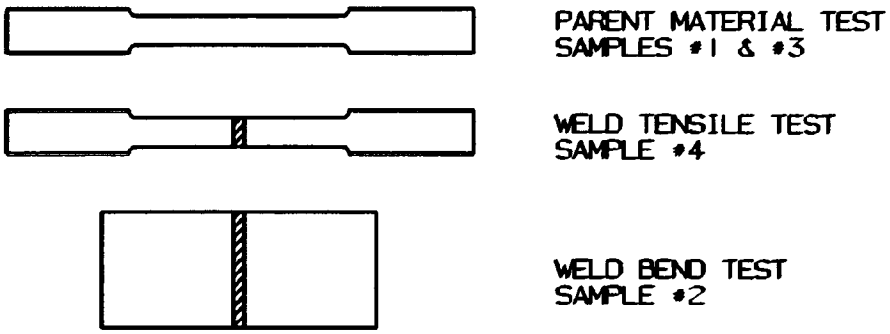




This Figure illustrates the proper tensile locations for a 2 piece cylinder with the heads having straight sidewall.

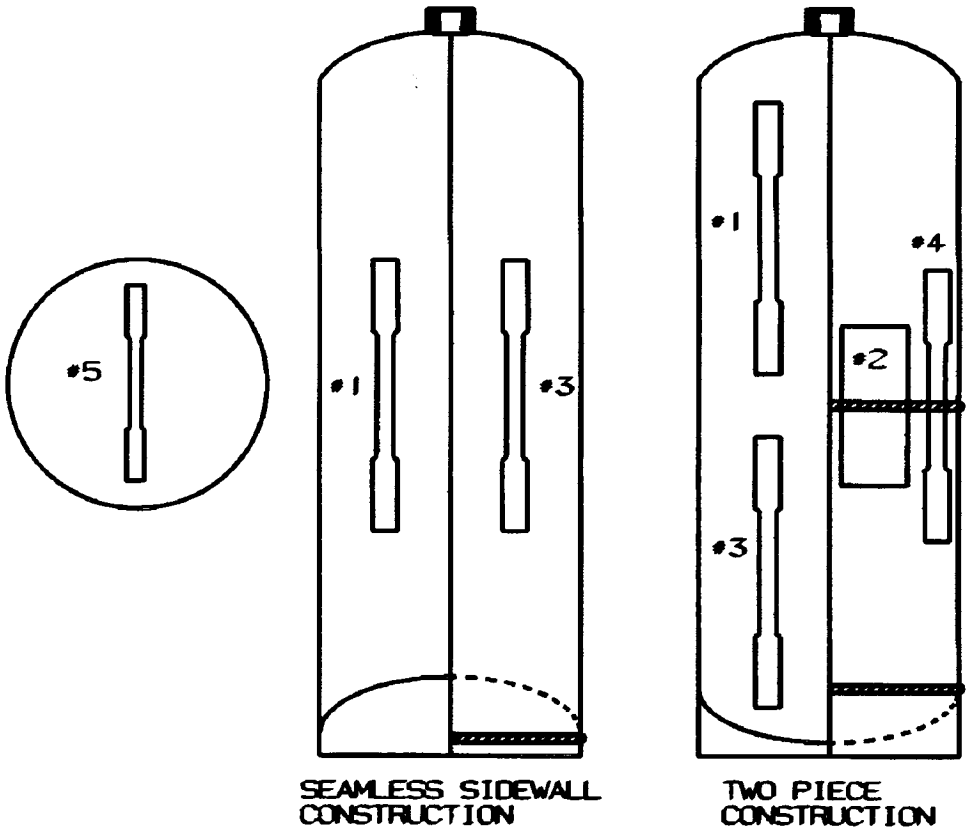
FIGURE #2

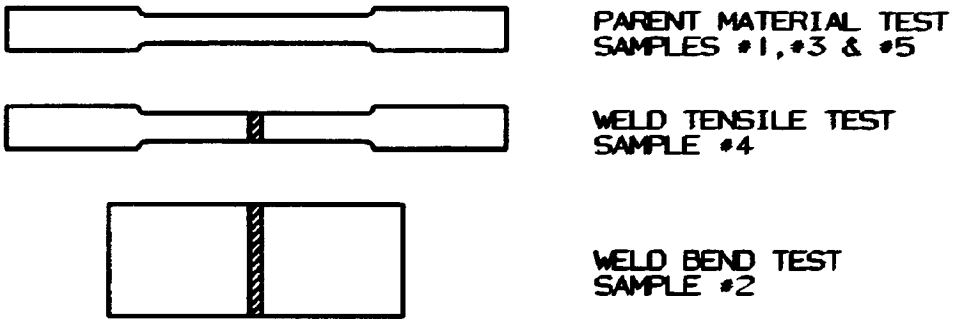




This Figure illustrates the proper tensile locations for a 3 piece cylinder with the heads not having straight sidewall.

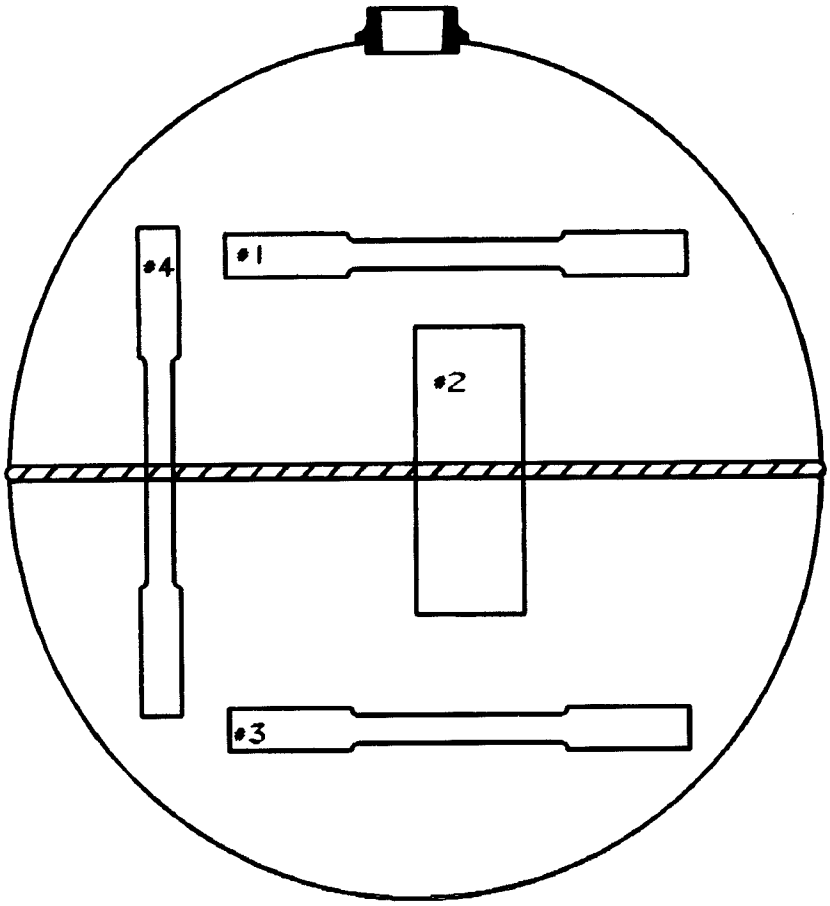
FIGURE #3

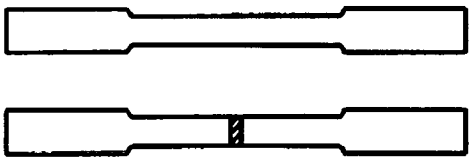




This Figure illustrates the proper tensile locations for a 2 piece cylinder that have deep drawn heads.

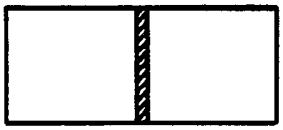
FIGURE #4





PARENT MATERIAL TEST
SAMPLES #1 & #3

WELD TENSILE TEST
SAMPLE #4



WELD BEND TEST
SAMPLE #2

This Figure illustrates the proper tensile locations for a 2 piece spherical cylinder.

FIGURE #5

BILLING CODE 4910–60–C

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

61. The authority citation for Part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

62. Subpart C would be added to Part 180 to read as follows:

Subpart C—Qualification, Maintenance and Use of Cylinders

Sec.

Subpart C—Qualification, Maintenance and Use of Cylinders

§ 180.201 Applicability.

This subpart prescribes requirements, in addition to those contained in Parts 107, 171, 172, 173 and 178 of this chapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic requalification of DOT specification and exemption cylinders.

§ 180.203 Definitions.

In addition to the definitions contained in §§ 171.8 and 178.69 of this subchapter, the following definitions apply to this subpart:

Associate Administrator means Associate Administrator for Hazardous Materials Safety.

Commercially free of corrosive components means a hazardous material having a dew point at or below minus 46.7 °C (minus 52 °F) at 101kPa (1 atmosphere) and free of material that will adversely react with the cylinder (e.g. chemical stress corrosion).

Condemn means a determination that a cylinder is unserviceable for the continued transportation of hazardous materials in commerce and that the cylinder may not be restored by repair, rebuilding, requalification or any other procedure.

Defect means an imperfection that requires removal of a cylinder from service.

Elastic expansion means the temporary increase in a cylinder's volume, due to application of pressure, which is lost when pressure is released.

Filled means an introduction or presence of a hazardous material in a cylinder.

Non-corrosive service means a hazardous material that is not corrosive to the materials of construction of a cylinder (including valve, pressure relief device, etc.) when moisture is introduced into the cylinder.

Over-heated means a condition in which any part of a cylinder has been subjected to a temperature in excess of 176 °C (350 °F).

Over-pressurized means a condition in which a cylinder has been subjected to an internal pressure in excess of 30% of its test pressure.

Permanent expansion means the permanent increase in a cylinder's volume after the test pressure is released (permanent expansion = total expansion minus elastic expansion).

Proof pressure test means a pressure test by interior pressurization without the determination of the cylinder's expansion.

Rebuild means the replacement of a pressure part (e.g. a wall, head or pressure fitting) by welding.

Rejected cylinder means a cylinder that can not be used for the transportation of a hazardous material in commerce without repair, rebuild or requalification.

Repair means a procedure for correction of a rejected cylinder and may involve welding.

Requalification means the completion of a visual inspection and or the test(s) that are required to be performed on a cylinder to determine its suitability for continued service.

Requalification identification number or RIN means a code assigned by DOT to uniquely identify a cylinder requalification, repair or rebuilding facility.

Test pressure means the pressure used for the requalification of a cylinder.

Total expansion means the total increase in a cylinder's volume due to application of the test pressure.

Visual inspection means an internal or external visual examination, or both, performed as part of the cylinder requalification process.

Volumetric expansion test means a pressure test by interior pressurization to measure a cylinder's expansion by using the water jacket or direct expansion methods:

(1) *Water jacket method* means a volumetric expansion test to determine a cylinder's total and permanent expansion by measuring the difference between the volume of water the cylinder externally displaces at test pressure and the volume of water the cylinder externally displaces at ambient pressure.

(2) *Direct expansion method* means a volumetric expansion test to calculate a cylinder's total and permanent expansion by measuring the amount of water forced into a cylinder at test pressure, adjusted for the compressibility of water, as a means of determining the expansion.

§ 180.205 General requirements for requalification of cylinders.

(a) *General.* Each cylinder used for the transportation of hazardous materials must be an authorized packaging. To qualify as an authorized packaging, each cylinder must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of subpart C of part 178 of this subchapter.

(b) *Persons performing requalification functions.* No person may represent that a repair or requalification of a cylinder has been performed unless that person holds a current approval issued under the procedural requirements prescribed in subpart I of part 107 of this chapter. No person may mark a cylinder with a RIN and a requalification date or otherwise represent that a DOT specification or exemption cylinder has been requalified unless all applicable requirements of this subpart have been met. A person who requalifies cylinders shall maintain, at each location at which it inspects, tests or marks cylinders, the records prescribed in § 180.215.

(c) *Periodic requalification of cylinders.* Each cylinder bearing a DOT specification marking must be requalified and marked as specified in the Requalification Table in this subpart. Each cylinder bearing a DOT exemption number must be requalified and marked in conformance with this section and the terms of the applicable exemption. No cylinder may be charged or filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in accordance with this subpart. A cylinder may be requalified at any time during the month and year that the requalification is due. However, a cylinder that was charged or filled before the requalification became due may remain in service until it has been emptied.

(1) Each cylinder that successfully passes requalification specified in this section must be marked in accordance with § 180.213.

(2) Each cylinder that fails requalification must be:

(i) Rejected and may be requalified in accordance with § 180.211; or

(ii) Condemned in accordance with paragraph (i) of this section.

(3) For nonmetric-marked DOT specification cylinders, the marked service pressure may be changed upon application to the Associate Administrator and receipt of written procedures.

(4) For a metric-marked cylinder, the start-to-discharge pressure of a pressure relief device must not be less than the marked test pressure of the cylinder. For a nonmetric-marked DOT–3 series cylinder, the start-to-discharge pressure of a pressure relief device must be set to not less than 100% of the minimum required test pressure at the first requalification due on and after [EFFECTIVE DATE OF THE FINAL RULE]. To ensure that the relief device does not open below its set pressure, the allowable tolerances for all the pressure relief devices must range from zero to plus 10% of its setting.

(d) *Conditions requiring test and inspection of cylinders.* Without regard to any other periodic requalification requirements, a cylinder must be tested and inspected in accordance with this section prior to further use if—

(1) The cylinder shows evidence of dented, corroded, cracked or abraded areas, leakage, thermal damage or any other condition that might render it unsafe for use in transportation.

(2) The cylinder has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.

(3) The cylinder has been over-heated or over-pressurized.

(4) The Associate Administrator determines that the cylinder may be in an unsafe condition.

(e) *Cylinders containing Class 8 materials.* A cylinder that previously contained a Class 8 material may not be used to transport a Class 2 material in commerce unless the cylinder is—

(1) Visually inspected, internally and externally, in accordance with paragraph (f) of this section and the inspection is recorded as prescribed in § 180.215;

(2) Requalified in accordance with this section, regardless of the date of the previous requalification;

(3) Marked in accordance with § 180.213;

(4) Decontaminated and the decontamination removes all significant residue or impregnation of the Class 8 material.

(f) *Visual inspection.* Except as otherwise provided in this subpart, each time a cylinder is pressure tested, it must be given an internal and external visual inspection. When a pressure test is not performed, the cylinder must be given an external visual inspection.

(1) The visual inspection must be performed in accordance with the following CGA Pamphlets: C–6 for steel and nickel cylinders; C–6.1 for seamless aluminum cylinders; C–6.2 for fiber reinforced exemption cylinders; C–6.3 for low pressure aluminum cylinders; C–8 for DOT 3HT cylinders, and C–13 for DOT 8 series cylinders.

(2) Each cylinder with a vinyl or plastic coating must have the coating completely removed prior to performing the visual inspection.

(3) Each cylinder subject to visual inspection must be approved, rejected or condemned according to the criteria in the applicable CGA pamphlet.

(4) In addition to other requirements prescribed in this paragraph, DOT 3AL cylinders must be inspected for evidence of sustained load cracking in the neck and shoulder area in accordance with the cylinder manufacturer's written recommendations which have been approved in writing by the Associate Administrator.

(g) *Pressure test.* Unless otherwise excepted, the pressure test must be conducted in accordance with the procedures in paragraphs 4, 5 and 6 and Appendices A and B of CGA Pamphlet C–1. Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(h) *Cylinder rejection.* A cylinder must be rejected when, after a visual inspection, it meets a condition for rejection under the visual inspection requirements of paragraph (f) of this section.

(1) A cylinder that is rejected may not be marked as meeting the requirements of this section.

(2) The requalifier shall notify the cylinder owner, in writing, that the cylinder has been rejected and, unless requalified as provided in § 180.211, may not be filled with a hazardous material for transportation in commerce where use of a specification packaging is required.

(3) A rejected nonmetric-marked cylinder with a service pressure of less than 900 psig may be requalified and marked if the cylinder is repaired or rebuilt and subsequently inspected and tested in conformance with—

(i) The visual inspection requirements of paragraph (f) of this section;

(ii) Part 178 of this subchapter and this part;

(iii) Any exemption covering the manufacture, requalification, and or use of that cylinder; and

(iv) Any approval required under § 180.211.

(i) *Cylinder condemnation.* (1) A cylinder must be condemned when—

(i) The cylinder meets a condition for condemnation under the visual inspection requirements of paragraph (f) of this section;

(ii) The cylinder leaks through its wall;

(iii) Evidence of cracking exists to the extent that the cylinder is likely to be weakened appreciably;

(iv) A DOT specification cylinder (including 4M), other than a DOT 4E aluminum cylinder or an exemption cylinder, permanent expansion exceeds 10 percent of total expansion;

(v) A DOT 3HT cylinder—

(A) Yields an elastic expansion exceeding the marked rejection elastic expansion (REE) value during the pressure test. A cylinder made before January 17, 1978, and not marked with an REE in cubic centimeters near the marked original elastic expansion must be so marked before the next test date. The REE for the cylinder is 1.05 times its original elastic expansion;

(B) Shows evidence of denting or bulging; or

(C) Bears a manufacture or an original test date older than twenty-four years or after 4,380 pressurizations, whichever occurs first. If a cylinder is refilled, on average, more than once every other day, an accurate record of the number of rechargings must be maintained by the cylinder owner or the owner's agent;

(vi) A DOT 4E or 4M aluminum cylinder's permanent expansion exceeds 12 percent of total expansion;

(vii) A DOT exemption cylinder's permanent expansion exceeds the limit in the applicable exemption, or the cylinder meets another criterion for condemnation in the applicable exemption;

(viii) An aluminum or an aluminum-lined composite exemption cylinder is exposed to a temperature exceeding 177 °C (350 °F); or

(ix) A DOT specification cylinder requalified by ultrasonic examination that exceeds the minimum rejection criteria set forth in Table II of § 180.207 or § 180.209, as applicable.

(2) When a cylinder is required to be condemned, the requalifier shall stamp a series of X's over the DOT specification number and the marked pressure or stamp ''CONDEMNED'' on the shoulder, top head, or neck using a steel stamp. Alternatively, at the direction of the owner, the requalifier may render the cylinder incapable of

holding pressure. In addition, the requalifier shall notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required.

(3) No person may remove or obliterate the ''CONDEMNED'' marking.

§ 180.207 Requirements for requalification of metric-marked specification cylinders.

(a) Each metric-marked cylinder that becomes due for periodic requalification as specified in Table I of this section must be inspected, tested, and marked in conformance with the requirements of this subpart. The ultrasonic examination must meet the requirements in Table II of this section. The recordkeeping requirements for an ultrasonic examination must be in accordance with § 180.215. The ultrasonic examination procedures and equipment must be approved by the Associate Administrator and meet the requirements set forth in Appendix B of Subpart C of Part 178 of this subchapter. Other nondestructive examinations (NDE) may be used only if approved in writing by the Associate Administrator.

(b) Except as otherwise provided, DOT 3FM, 3ALM and 3M cylinders must have 100% of the cylindrical section tested by straight-beam and angle-beam. For a DOT 4M cylinder with a marked test pressure greater than 70 bar or tensile strength greater than or equal to 830 Kpa (120,000 psi), 100% of the cylindrical section must be tested by straight-beam and angle-beam. For a DOT 4M cylinder with a marked test pressure of 70 bar or less and tensile strength less than 830 Kpa (120,000 psi), 100% of the cylindrical section must be tested by straight beam if an ultrasonic examination is performed.

Tables to § 180.207

TABLE I TO § 180.207.—REQUALIFICATION OF METRIC-MARKED CYLINDERS

Interval period (years)	Test of inspection	Specifications	Type of service	
			First	subseq.
External visual inspection.	DOT–3M, 3FM, 3ALM, 4M	External visual inspections in accordance with the applicable CGA pamphlet must be performed in conjunction with the ultrasonic examination.	.....	.....
INTERNAL and EXTERNAL VISUAL INSPECTION.	DOT–4M	Except as otherwise provided, the internal and external visual inspections must be performed in conjunction with the pressure test and in accordance with the applicable CGA pamphlet.	.....	.....
Ultrasonic EXAMINATION.	DOT 3M, 3FM, 3ALM, 4M	All, except cylinders used exclusively for the material listed below:.	5	5
	DOT 3M, 3FM, 3ALM	(1) Nonliquefied or liquefied, noncorrosive, nontoxic (the LC50 of the lading is not less than 5000 ppm) gases that are commercially free from corrosive components, and in cylinders protected externally by a suitable corrosion-resistant coating. A coating on a stainless steel or aluminum cylinder is optional.		
		(2) Class 3 (flammable) liquids without pressurization that are nontoxic (except 6.1 PG III) and are commercially free from corroding components.		
		(3) Class 8 (corrosive) liquids without pressurization that are nontoxic (except 6.1 PG III) and do not meet the criteria of § 173.137(c)(2) of this subchapter. See restriction in § 180.205(e).	10	10
	DOT 3M	Anhydrous ammonia commercially free from corrosive components, and in cylinders protected externally by a suitable corrosion-resistant coating.	10	10
	DOT 4M (DOT 4M cylinders with a test pressure of 70 bar or less may be tested by a volumetric expansion test).	(1) Nonliquefied or liquefied, noncorrosive, nontoxic (the LC50 of the lading is not less than 5000 ppm) gases that are commercially free from corrosive components, and in cylinders protected externally by a suitable corrosion-resistant coating. A coating on a stainless steel or aluminum cylinder is optional.		
		(2) Class 3 liquids without pressurization that are nontoxic (except 6.1 PG III) and are commercially free from corrosive components.	15	15
		(3) Class 8 (corrosive) liquids without pressurization that are nontoxic (except 6.1 PG III) and do not meet the criteria of § 173.137(c)(2) of this subchapter. See restriction in § 180.205(e).		
	DOT 3M and 4M (DOT 4M cylinders with a test pressure of 70 bar or less may be tested by a volumetric expansion test).	Specification cylinders used exclusively as fire extinguishers and meeting the limitations in special provision 18 in § 172.102(c)(1) of this subchapter.	12	12

TABLE II TO § 180.207.—CRITERIA FOR PERIODIC ULTRASONIC EXAMINATION OF METRIC MARKED CYLINDERS

DOT specification	Coverage area of cylinder by straight beam (longitudinal wave)	Coverage area of cylinder by angle beam (shear wave)	Rejectable crack depth in sidewall (% of wall thickness)	Rejectable crack length in sidewall (multiple of wall thickness)	Rejectable crack size in the circumferential welded joint (depth × length)	Rejectable pit size diameter (D) × depth	Rejected area for reduced wall thickness (t) reduced wall t=any value less than design min. wall t[1] D=diameter of the cylinder
3FM	100% of sidewall.	100% of sidewall.	10% of Wall Thickness	4 times Wall Thickness	NA	3 mm × ⅓ of the Designed Wall Thickness.	161 mm^2 or $0.002D^2$.
3ALM	100% of sidewall.	100% of sidewall.	15% of Wall Thickness	5 times Wall Thickness	NA	3 mm × ⅓ of the Designed Wall Thickness.	323 mm^2 or $0.004D^2$.
3M	100% of sidewall.	100% of sidewall.	15% of Wall Thickness	5 times Wall Thickness	NA	3 mm × ⅓ of the Designed Wall Thickness.	323 mm^2 or $0.004D^2$.
4M with a marked test pressure >70 bar or tensile strength ≥830 MPa.	100% of sidewall.	100% of sidewall.	10% of Wall Thickness	4 times Wall Thickness	10% of Wall Thick (Depth) and 2 times of Wall Thick, (Length).	3 mm × ⅓ of the Designed Wall Thickness.	323 mm^2 or $0.004D^2$.
4M with a marked test pressure ≤70 bar or tensile strength <830 MPa.	100% of sidewall.	NA	NA	NA	NA	NA	323 mm^2 or $0.004D^2$.

[1] Term wall thickness in this table means the minimum design wall thickness provided in the manufacturers inspection report.

§ 180.209 Requirements for requalification of nonmetric-marked specification cylinders.

(a) *Periodic qualification of cylinders.* (1) Each nonmetric-marked cylinder that becomes due for periodic requalification, as specified in the following table, must be requalified and marked in conformance with the requirements of this subpart. The recordkeeping requirements must be in accordance with § 180.215. Table I follows:

TABLE I.—REQUALIFICATION OF NONMETRIC-MARKED CYLINDERS [1]

Specification under which cylinder was made [2]	Minimum test pressure (p.s.i.) [3]	Test period (years)
DOT–3	3,000 p.s.i.	5.
DOT–3A, 3AA	5/3 times service pressure, except noncorrosive service (see § 180.209(g)).	5, 10, or 12 (see § 180.209 (b), (f), (h) and (j)).
DOT–3AL	5/3 times service pressure	5 or 12 (see 180.209(j)).
DOT–3AX, 3AAX	5/3 times service pressure	5.
3B, 3BN	2 times service pressure (see § 180.209(g))	5 or 10 (see § 180.209(f)).
3E	Test not required.	
3HT	5/3 times service pressure	3 (see § 180.209(i) and 180.213(c)).
3T	5/3 times service pressure	5.
4AA480	2 times service pressure (see § 180.209(g))	5 or 10 (see § 180.209(e)(14)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (see § 180.209(g)).	5, 10 or 12 (see § 180.209(e), (f) and (j)).
4D, 4DA, 4DS	2 times service pressure	5.
DOT–4E	2 times service pressure, except non-corrosive service (see § 180.209(g)).	5.
4L	Test not required	
8, 8AL		10 or 20 (See § 180.209(i)).
Exemption Cylinder Foreign cylinder (see § 173.301(j) for restrictions on use.	See current exemption as marked on the cylinder, but not less than 5/3 of any service or working pressure marking.	See current exemption 5 (see § 180.209(k) and § 180.213(d)(iii)).

[1] Any cylinder not exceeding two inches outside diameter and less than two feet in length is excepted from hydrostatic test.
[2] After January 1, 2005, DOT–3T and 3HT specification cylinders must be inspected by a non-destructive testing method approved by the Associate Administrator.
[3] For cylinders not marked with a service pressure, see § 173.301(e)(1) of this subchapter.

(2) In lieu of a hydrostatic pressure test (i.e. volumetric expansion or proof pressure tests) as required by this section, each DOT specification cylinder that becomes due for periodic requalification, as specified in Table I of paragraph (a)(1) of this section, may be requalified by using one of the following methods:

(i) Ultrasonic examination: Ultrasonic examination must be in conformance with the requirements of the Appendix B of Subpart C of part 178 of this subchapter and Table II of paragraph (a)(2) of this section. Minimum wall thickness of each cylinder examined by UT must be equal to or greater than the design minimum wall thickness. For each cylinder, the minimum wall thickness data from the cylinder manufacturer's inspection report must be available and used during UT examination. An external visual inspection in accordance with the applicable CGA pamphlet is required to be performed in conjuction with the ultrasonic examination. The recordkeeping requirements for an ultrasonic examination must be in accordance with § 180.215. The marking requirements for an ultrasonic examination must be in accordance with § 180.213.

Note to paragraph (a)(2)(i): The test interval for the requalification of a nonmetric-marked DOT specification cylinder subjected to UT examination is the same as specified in Table I of paragraph (a)(1) of this section. The ultrasonic examination only replaces the hydrostatic pressure test.

(ii) Other nondestructive examinations (NDE) as approved in writing by the Associate Administrator. Table II follows:

TABLE II.—CRITERIA FOR PERIODIC ULTRASONIC EXAMINATION OF NON-METRIC MARKED CYLINDERS

DOT spec	Coverage area of cylinder by straight beam (longitudinal wave)	Coverage area of cylinder by angle beam (shear wave)	Rejectable defect depth in sidewall (% of wall thickness)	Rejectable defect length in sidewall (multiple of wall thickness)	Rejectable pit size diameter (D) × depth	Rejected area for reduced wall thickness (t) reduced wall t = any value less than design min. wall t[1] D = diameter of the cylinder
3T	100% of sidewall.	100% of sidewall.	10% of Wall Thickness	4 times Wall Thickness	3 mm × ⅓ of the Designed Wall Thickness.	161 mm^2 or $0.002D^2$.
3AL (mfg. after 1989)	100% of sidewall.	100% of sidewall.	15% of Wall Thickness	5 times Wall Thickness	3 mm × ⅓ of the Designed Wall Thickness.	323 mm^2 or $0.004D^2$.
3AA,3A, 3AX, 3AAX	100% of sidewall.	100% of sidewall.	15% of Wall Thickness	5 times Wall Thickness	3 mm × ⅓ of the Designed Wall Thickness.	323 mm^2 or $0.004D^2$.
4B,4BA,4BW4D,4DS,4DA	100% of sidewall.	NA	NA	NA	3 mm × ⅓ of the Designed Wall Thickness.	323 mm^2 or $0.004D^2$.

[1] Term wall thickness in this table means the minimum design wall thickness provided in the manufacturers inspection report.

(b) *DOT–3A or 3AA cylinders.* (1) A cylinder conforming to specification DOT–3A or 3AA with a water capacity of 125 pounds or less that is removed from any cluster, bank, group, rack, or vehicle each time it is filled, may be requalified every ten years instead of every five years, provided the cylinder meets all of the following—

(i) The cylinder was manufactured after December 31, 1945;

(ii) The cylinder is used exclusively for air, argon, cyclopropane, ethylene, helium, hydrogen, krypton, neon, nitrogen, nitrous oxide, oxygen, sulfur hexafluoride, xenon, permitted mixtures of these gases (see § 173.301(d) of this subchapter), and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided that the gas has a dew point at or below minus (52°F) at 1 atmosphere;

(iii) Before each refill, the cylinder is removed from any cluster, bank, group, rack or vehicle and passes the hammer test specified in CGA Pamphlet C–6;

(iv) The cylinder is dried immediately after hydrostatic testing to remove all traces of water;

(v) The cylinder is not used for underwater breathing; and

(vi) Each cylinder is stamped with a five-pointed star at least one-fourth of an inch high immediately following the test date.

(2) If, since the last required requalification, a cylinder has not been used exclusively for the gases specifically identified in paragraph (b)(1)(ii) of this section, but currently conforms with all other provisions of paragraph (b)(1) of this section, it may be requalified every 10 years instead of every five years, provided it is first requalified and examined as prescribed by § 173.302a(b)(2), (3) and (4) of this subchapter.

(3) Except as specified in (b)(2) of this section, if a cylinder, marked with a star, is filled with a compressed gas other than as specified in paragraph (b)(1)(ii) of this section, the star following the most recent test date must be obliterated. The cylinder must be requalified five years from the marked test date, or prior to the first filling with a compressed gas, if the required five-year requalification period has passed.

(c) *DOT 4-series cylinders.* A DOT 4-series cylinder, except 4L cylinders, that at any time shows evidence of a leak or of internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably; or that has lost five percent or more of its official tare weight must be requalified before being refilled and offered for transportation. (Refer to CGA Pamphlet C–6 or C–6.3, as applicable, regarding cylinder weakening.) After testing, the actual tare weight must be recorded as the new tare weight.

(d) *Cylinders 12 pounds or less with service pressures of 300 psi or less.* A cylinder of 12 pounds or less water capacity authorized for service pressure of 300 psi or less must be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA Pamphlet C–6 or C–6.1. The cylinder may be hydrostatically tested without a water jacket and without determining total and permanent expansions. The test is successful if the cylinder, when examined under test pressure, does not display a defect described in § 180.205(i)(1)(ii) or (iii).

(e) *Proof pressure test.* A cylinder made in compliance with specification DOT 4B, DOT 4BA, DOT 4BW, DOT 4E that is used exclusively for anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; liquefied petroleum gas; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and that is commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be requalified every 12 years instead of every five years. Alternatively, the cylinder may be subjected to internal hydrostatic pressure of at least two times the marked service pressure without determination of expansion, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to the latter test, the cylinder must be carefully examined under test pressure and removed from service if a leak or other harmful defect exists. A cylinder requalified by the proof pressure test method must be marked after a test or an inspection with the appropriate RIN and the date of requalification or reinspection on the cylinder followed by an ''S''.

(f) *Poisonous materials.* A cylinder conforming to specification DOT–3A, DOT–3AA, DOT–3B, DOT–4BA or DOT–4BW having a service pressure of 300 psi or less that is used exclusively for methyl bromide, liquid; mixtures of methyl bromide and ethylene dibromide, liquid; mixtures of methyl bromide and chlorpicrin, liquid; mixtures of methyl bromide and petroleum solvents, liquid; or methyl bromide and nonflammable, nonliquefied compressed gas mixtures, liquid; that is commercially free of corroding components, and that is protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) and internally by a suitable corrosion resistant lining (such as galvanizing) may be tested every 10 years instead of every five years, provided that a visual internal and external examination of the cylinder is conducted every five years in accordance with CGA Pamphlet C–6. The cylinder must be examined at each filling, and rejected if a dent, corroded area, leak or other condition indicates possible weakness.

(g) *Visual inspections.* A cylinder conforming to a specification listed in the table in this paragraph and used exclusively in the service indicated may, instead of a periodic hydrostatic test, be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA Pamphlet C–6 or C–6.3, as applicable. When this inspection is used instead of hydrostatic pressure testing, subsequent inspections are required at five-year intervals after the first inspection. Inspections must be made only by persons holding a current RIN and the results recorded and maintained in accordance with § 180.215. Records shall include: date of inspection (month and year); DOT specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (e.g., leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footring or protective ring or fire damage); disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or condemned). A cylinder passing requalification by the external visual inspection must be marked in accordance with § 180.213. Specification cylinders must be in exclusive service as follows:

Cylinders made in compliance with—	Used exclusively for—
DOT–3A, DOT–3AA, DOT–3A480X, DOT–4AA480	Anhydrous ammonia of at least 99.95% purity.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW.	Butadiene, inhibited, which is commercially free from corroding components.
DOT–3A, DOT–3A480X, DOT–3AA, DOT–3B, DOT–4AA480, DOT–4B, DOT–4BA, DOT–4BW.	Cyclopropane which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Fluorinated hydrocarbons and mixtures thereof which are commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Liquefied hydrocarbon gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Liquefied petroleum gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Methylacetylene-propadiene, stabilized, which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW	Anhydrous mono, di, trimethylamines which are commercially free from corroding components.
DOT–4B240, DOT–4BW240	Ethyleneimine, inhibited.

(h) *Cylinders containing anhydrous ammonia.* A cylinder made in compliance with specification DOT–3A, DOT–3A480X, or DOT–4AA480 used exclusively for anhydrous ammonia, commercially free from corroding components, and protected externally by a suitable corrosion-resistant coating (such as painting) may be requalified every 10 years instead of every five years.

(i) *Requalification of DOT 8 series cylinders.* (1) Each owner of a DOT 8 series cylinder used to transport acetylene must have the cylinder shell and the porous filler requalified in accordance with CGA Pamphlet C–13. Requalification must be performed in accordance with the following schedule:

Date of cylinder manufacture	Shell (visual inspection) requalification		Porous filler requalification	
	Initial	Subsequent	Initial	Subsequent
Before January 1, 1991	Before January 1, 2001	10 years	Before January 1, 2011	Not required.
On or after January 1, 1991	10 years [1]	10 years	3 to 20 years [2]	Not required.

[1] Years from date of cylinder manufacture.
[2] For a cylinder manufactured on or after January 1, 1991, requalification of the porous filler must be performed no sooner than 3 years, and no later than 20 years, from the date of manufacture.

(2) Unless requalified and marked in accordance with CGA Pamphlet C–13 before October 1, 1994, an acetylene cylinder must be requalified by a person who holds a current RIN.

(3) If a cylinder valve is replaced, a cylinder valve of the same weight must be used or the tare weight of the cylinder must be adjusted to compensate for valve weight differential.

(4) The person performing a visual inspection, or requalification must record the results as specified in § 180.215.

(5) The person performing a visual inspection, or requalification must mark the cylinder as specified in § 180.213.

(j) *Cylinders used as a fire extinguisher.* Only DOT specification cylinders used as fire extinguishers and meeting Special Provision 18 in § 172.102(c)(1) of this subchapter may be requalified in accordance with this paragraph (j).

(1) A DOT specification 4B, 4BA, 4B240ET or 4BW cylinder may be tested as follows:

(i) For a cylinder with a water capacity of 12 pounds or less by volumetric expansion test using the water jacket method or by proof pressure test. A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(ii) For a cylinder having a water capacity over 12 pounds—

(A) *By proof pressure test.* A requalification must be performed 12 years after the original test date and at 7-year intervals; or

(B) *By volumetric expansion test using the water jacket method.* A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(2) A DOT specification 3A, 3AA, or 3AL cylinder must be requalified by volumetric expansion test using the water jacket method. A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(k) *Requalification of foreign cylinders filled for export.*

(1) A cylinder manufactured outside the United States, other than as provided in § 171.12a of this subchapter, that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be filled with compressed gas in the United States, and shipped solely for export if it meets the following requirements, in addition to other requirements of this subchapter:

(i) It has been inspected, tested and marked (with only the month and year of test) in conformance with the procedures and requirements of this subpart or the Associate Administrator has authorized the filling company to fill foreign cylinder under an alternative method of qualification; and

(ii) It is offered for transportation in conformance with the requirements of § 173.301(l) of this subchapter.

(2) [Reserved]

§ 180.211 Repair, rebuilding and reheat treatment of nonmetric-marked DOT–4 series specification cylinders.

(a) *General requirements for repair and rebuilding.* Any repair or rebuilding of a DOT 4B, 4BA or 4BW cylinder must be performed by a person holding an approval as specified in § 107.805 of this chapter. A person performing a rebuild function shall be considered a manufacturer subject to the requirements of § 178.2(a)(2) and subpart C of part 178 of this subchapter. The person performing a repair, rebuild, or reheat treatment must record the test results as specified in § 180.215. Each cylinder that is successfully repaired or rebuilt must be marked in accordance with § 180.213.

(b) *General repair requirements.* Any repair of a cylinder must be made in accordance with the following:

(1) The repair and the inspection of the work performed must be made in accordance with the requirements of the cylinder specification.

(2) The person performing the repair shall use the procedure, equipment, and filler metal or brazing material as authorized by the approval issued under § 107.805 of this chapter.

(3) Welding and brazing shall be performed on an area free from contaminants.

(4) A weld defect, such as porosity in a pressure retaining seam, shall be completely removed before rewelding. Puddling may be used to remove a weld defect only by the tungsten inert gas shielded arc process.

(5) After removal of a non-pressure attachment and before its replacement, the cylinder shall be given a visual inspection in accordance with § 180.205(f).

(6) Reheat treatment of DOT–4B, 4BA or 4BW specification cylinders after replacement of non-pressure attachments is not required when the total weld material does not exceed 8 inches. Individual welds must be at least three inches apart.

(7) After repair of a DOT 4B, 4BA or 4BW cylinder, the weld area is to be leak tested at the service pressure of the cylinder.

(8) Repair of weld defects must be free of cracks.

(9) When a non-pressure attachment with the original cylinder specification markings is replaced, all markings must be transferred to the attachment on the repaired cylinder.

(10) Walls, heads or bottoms of cylinders with defects or leaks in base metal may not be repaired, but may be replaced as provided for in paragraph (d) of this section.

(c) *Additional repair requirements for 4L cylinders.* (1) Repairs to a DOT 4L cylinder are limited to the following:

(i) The removal of either end of the insulation jacket to permit access to the cylinder, piping system, or neck tube.

(ii) The replacement of the neck tube. At least a 13 mm (0.51 inch) piece of the original neck tube must be protruding above the cylinder's top end. The original weld attaching the neck tube to the cylinder must be sound and the replacement neck tube must be welded to this remaining piece of the original neck tube.

(iii) The replacement of material such as, but not limited to, the insulating material and the piping system within

the insulation space is authorized. The replacement material must be equivalent to that used at the time of original manufacture.

(iv) Other welding procedures which are qualified by CGA Pamphlet C–3, and not excluded by the definition of rebuild, are authorized.

(2) After repair, the cylinder must be:

(i) Pressure tested in accordance with the specifications under which the cylinder was originally manufactured;

(ii) Leak tested before and after assembly of the insulation jacket using a mass spectrometer detection system; and

(iii) Tested for heat conductivity requirements.

(d) *General rebuilding requirements.* (1) The rebuilding of a cylinder must be made in accordance with the following requirements:

(i) The person rebuilding the cylinder must use the procedures and equipment as authorized by the approval issued under § 107.805 of this chapter.

(ii) After removal of a non-pressure component and before replacement of any non-pressure component, the cylinder must be visually inspected in accordance with CGA Pamphlet C–6.

(iii) The rebuilder may rebuild a DOT 4B, 4BA or 4BW cylinder having a water capacity of 20 pounds or greater by replacing a head of the cylinder using a circumferential joint. When this weld joint is located at other than an original welded joint, a notation of this modification shall be shown on the Manufacturer's Report of Rebuilding in § 180.215(d)(2). Weld joint must be on the cylindrical section of the cylinder.

(iv) Any welding and the inspection of the rebuilt cylinder must be in accordance with the requirements of the applicable cylinder specification and the following requirements:

(A) Rebuilding of any cylinder involving a joint subject to internal pressure may only be performed by fusion welding;

(B) Welding shall be performed on an area free from contaminants; and

(C) A weld defect, such as porosity in a pressure retaining seam, shall be completely removed before rewelding. Puddling may be used to remove a weld defect only by the tungsten inert gas shielded arc process.

(2) Any rebuilt cylinder must be—

(i) Heat treated in accordance with paragraph (f) of this section;

(ii) Subjected to a volumetric expansion test on each cylinder as specified in CGA Pamphlet C–1, paragraphs 4 or 5, and Appendices A and B. The results of the tests must conform with the applicable cylinder specification;

(iii) Inspected and have test data reviewed to determine conformance with the applicable cylinder specification; and

(iv) Made of material that conforms to the specification. Determination of conformance shall include chemical analysis, verification, inspection and tensile testing of the replaced part. Tensile tests must be performed on the replaced part after heat treatment by lots defined in the applicable specification.

(3) A record of rebuilding must be completed for each cylinder rebuilt in the format presented in § 180.215(d).

(4) Rebuilding a cylinder with brazed seams is prohibited.

(5) When an end with the original cylinder specification markings is replaced, all markings must be transferred to the rebuilt cylinder.

(e) *Additional rebuilding requirements for DOT–4L cylinders.* (1) The rebuilding of a DOT 4L cylinder is:

(i) Substituting or adding material in the insulation space not identical to that used in the original manufacture of that cylinder;

(ii) Making a weld repair not to exceed 150 mm (5.9 inches) in length on the longitudinal seam of the cylinder or 300 mm (11.8 inches) in length on a circumferential weld joint of the cylinder; or

(iii) Replacing the outer jacket.

(2) Reheat treatment of cylinders is prohibited.

(3) After rebuilding, each inner containment vessel must be proof pressure tested at 2 times its service pressure. Each completed assembly must be leak-tested using a mass spectrometer detection system.

(f) *Reheat treatment.* (1) Prior to reheat treatment, each cylinder must be given a visual inspection, internally and externally, in accordance with § 180.205(f).

(2) Cylinders must be segregated in lots for reheat treatment. The reheat treatment and visual inspection must be performed in accordance with the specification for the cylinders except as provided in paragraph (f)(4) of this section.

(3) After reheat treatment, each cylinder in the lot must be subjected to a volumetric expansion test and meet the acceptance criteria in the applicable specification or be scrapped.

(4) After all welding and heat treatment, a test of the new weld must be performed as required by the original specification. The test results must be recorded in accordance with § 180.215.

§ 180.213 Requalification markings.

(a) *General.* Each cylinder that has been requalified in accordance with this subpart with acceptable results must be marked as specified in this section. Required markings may not be altered or removed.

(b) *Placement of markings.* Each cylinder must be plainly and permanently marked into the metal of the cylinder as permitted by the applicable specification. Unless authorized by the cylinder specification, marking on the cylinder sidewall is prohibited.

(1) Required specification markings must be legible so as to be readily visible at all times. Markings that are becoming illegible may be remarked on the cylinder as provided by the original specification. The markings may be placed on any portion of the upper end of the cylinder excluding the sidewall. No steel stamping, engraving, or scribing may be made in the sidewall of the cylinder unless specifically permitted in the applicable cylinder specification. A metal plate if used, must be attached as provided by the original specification.

(2) Markings of previous tests may not be obliterated, except when the space originally provided for requalification dates becomes filled, additional dates may be added as follows:

(i) All preceding test dates may be removed by peening provided that—

(A) Permission is obtained from the cylinder owner;

(B) The minimum wall thickness is maintained in accordance with manufacturing specifications for the cylinder; and

(C) The original manufacturing test date is not removed.

(ii) When the cylinder is fitted with a footring, additional dates may be marked on the external surface of the footring.

(c) *Marking method.* The depth of markings may be no greater than that specified in the applicable specification. The markings must be made by stamping, engraving, scribing or any method approved in writing by the Associate Administrator.

(1) A cylinder used as a fire extinguisher (§ 180.209(j)) may be marked by using a pressure sensitive label.

(2) For a DOT 3HT cylinder, the test date and RIN must be applied by low-stress steel stamps to a depth no greater than that prescribed at the time of manufacture. Stamping on the sidewall is not authorized.

(d) *Requalification markings.* (1) Each cylinder that has successfully passed requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must

appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right, and the fourth in the lower left. Example: A cylinder requalified in September 1998, and approved by a person who has been issued RIN ''A123'', would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section:

A1

9 32 98

(2) Upon a written request, variation from the marking requirement may be approved by the Associate Administrator.

(3) *Exception.* A cylinder subject to the requirements of § 173.301(l) of this subchapter may not be marked with a RIN.

(e) *Size of markings.* The size of the markings must be at least 6.35 mm (¼ in.) high, except that RIN characters must be at least 3.18 mm (⅛ in.) high.

(f) Illustrations of the required marking information for metric-marked cylinders and exemption cylinders after requalification are as follows:

(1) Ultrasonic examination:

9 A1 98 **UT**
32

(2) Volumetric expansion test:

9 A1 98
32

(g) Illustrations of the required marking information for nonmetric-marked cylinders and exemption cylinders after requalification are as follows:

(1) 5-year volumetric expansion test; 10-year volumetric expansion test (cylinders conforming to § 180.209(f) and (h)); or 12-year volumetric expansion test(fire extinguishers conforming to § 173.309(b) of this subchapter and cylinders conforming to § 180.209(e)and § 180.209(g)):

9 A1 98
32

(2) 10-year volumetric expansion test(cylinders conforming to § 180.209(b)):

9 A1 98 ☆
32

(3) Special filling limits up to 10% in excess of the marked service pressure (cylinders conforming to § 173.302a(b) of this subchapter):

9 A1 98 **+**
32

(4) Proof pressure test (fire extinguishers conforming to § 173.309(b) of this subchapter and cylinders conforming to § 180.209(e)):

9 A1 98 **S**
32

(5) 5-year external visual inspection (cylinders conforming to § 180.209(g)):

9 A1 98 **E**
32

(6) Requalification after a repair procedure and volumetrically tested (cylinders conforming to § 180.211):

9 A1 98 **RP**
32

(7) Requalification after a repair procedure and proof pressure tested (cylinders conforming to § 180.211):

9 A1 98 **RPS**
32

(8) Requalification after a rebuilding procedure:

9 A1 98 **RB**
32

(9) DOT 8 series cylinder shell reinspection only:

9 A1 98 **S**
32

(10) DOT 8 series cylinder shell and porous filler reinspection:

9 A1 98 **FS**
32

§ 180.215 Reporting and record retention requirements.

(a) *Facility records.* A person who requalifies, repairs or rebuilds cylinders shall maintain the following records where the requalification is performed:

(1) Current RIN issuance letter;

(2) If the RIN has expired and renewal is pending, a copy of the renewal request;

(3) Copies of notifications to Associate Administrator required under § 107.805 of this subchapter;

(4) Current copies of those portions of this subchapter that apply to its cylinder requalification and marking activities at that location;

(5) Current copies of all exemptions governing exemption cylinders requalified or marked by the requalifier at that location; and

(6) The information contained in each applicable CGA or ASTM standard incorporated by reference in § 171.7 of this subchapter that applies to the requalifier's activities. This information must be the same as contained in the edition incorporated by reference in § 171.7 of this subchapter.

(b) *Requalification records.* Daily records of visual inspection, pressure test, and ultrasonic examination, as applicable, must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. A single date may be used for each test sheet, provided each test on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries: date; actual dimensions; if present, manufacturer's name or symbol; if present, owner's name or symbol and test operator. Blank spaces may not be used to indicate repetition of a prior entry. The records must include the following information:

(1) *Pressure test records.* For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of test operator. The test operator must be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic tests that were performed on that day. The daily verification of calibration(s) may be recorded on the same sheets as, and with, test records for that date.

(2) *Pressure test and visual inspection records.* The date of requalification; serial number; DOT specification or exemption number; marked pressure; actual dimensions; if present,

manufacturer's name or symbol; if present, owner's name or symbol; result of visual inspection; actual test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for any repeated test, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to § 173.302a(b)(5) of this subchapter, the test sheet must indicate the method by which any average or maximum wall stress was computed. Records must be kept for all completed, as well as unsuccessful tests. The entry for a second test under CGA Pamphlet C–1 after a failure to hold test pressure, must indicate the date of the earlier inspection or test.

(3) *Wall stress.* Calculations of average and maximum wall stress pursuant to § 173.302a(b)(3) of this subchapter, if performed;

(4) *Calibration certificates.* The most recent certificate of calibration must be maintained for each calibrated cylinder.

(5) *Ultrasonic examination records.* The information prescribed in ASTM E 797 or ASTM E 213 as applicable.

(c) *Repair, rebuilding or reheat treatment records.* (1) Records covering welding or brazing repairs, rebuilding or reheat treating shall be retained for a minimum of fifteen years by the approved facility.

(2) A record for rebuilding, in accordance with § 180.211(d), must be completed for each cylinder rebuilt. The record must be clear, legible, and contain the following information:

Cylinder Identification

Original Manufacturer _____
Cylinder Specification Number and Service Pressure _____
Cylinder Serial Number _____
Date at Original Manufacturer _____
Other Identification Marks _____

Chemical Analysis of Replacement Parts

Parts Being Replaced _____
Heat Identification _____
Steel Manufactured by _____
Analysis Performed by _____

C	P	S	Si	Mn	Ni	Cr	Mo	Cu	Al	Zn

Record of Physical Test of Replacement Parts

Yield PSI	Tensile PSI	Elongation in inches	Reduction in area %	Weld bend	Weld tensile

Record of Volumetric Expansion Test

Calculated volumetric capacity of the cylinder being rebuilt-_____ lbs.

Actual test pressure	Total expansion	Permanent expansion	Percent of total to permanent	Volumetric capacity

(Permanent expansion may not exceed 10% of the total expansion) (Volumetric capacity of a rebuilt cylinder must be within plus or minus 3% at the calculated capacity)

I certify that this rebuilt cylinder is accurately represented by the data above and complies with all of the requirements in Subchapter C of 49 CFR.

Repair Technician _____
Date _____
Company Representative _____
Date _____

Issued in Washington D.C. on October 15, 1998, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–28118 Filed 10–26–98; 10:46 am]

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Friday
October 30, 1998

Part III

Federal Trade Commission

16 CFR Part 308
Pay-per-Call Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 308

Pay-per-Call Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission (the ''Commission'' or ''FTC'') issues a Notice of Proposed Rulemaking to amend the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (the ''900-Number Rule,'' ''Rule,'' or ''original Rule''), 16 CFR Part 308, and requests public comment on the proposed changes. The 900-Number Rule governs the advertising and operation of pay-per-call services, and establishes billing dispute procedures for those services as well as for other telephone-billed purchases.

This document invites written comments on all issues raised by the proposed changes and, specifically, on the questions set forth in Section I of this Notice. This document also contains an invitation to participate in a public workshop to be held following the close of the comment period, to afford the Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period.

DATES: Written comments will be accepted until January 8, 1999. Notification of interest in participating in the public workshop also must be submitted on or before January 8, 1999. The public workshop will be held on February 25 and 26, 1999, from 9:00 a.m. until 5:00 p.m.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form. Comments should be identified as ''Pay-Per-Call Rule Review—Comment. FTC File No. R611016.''

Notification of interest in participating in the public workshop should be submitted in writing, separately from written comments, to Carole Danielson, Division of Marketing Practices, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580. The public workshop will be held at the Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Adam Cohn, (202) 326–3411, Marianne Schwanke, (202) 326–3165, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

1. Telephone Disclosure and Dispute Resolution Act of 1992 (''TDDRA'')

Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (''TDDRA''), 15 U.S.C. 5701 *et seq.*, to curtail the unfair and deceptive practices engaged in by some pay-per-call businesses and to encourage the growth of the legitimate pay-per-call industry.[1] Title I of TDDRA directed the Federal Communications Commission (''FCC'') to adopt regulations defining the obligations of common carriers in connection with providing tariffed common carrier services to pay-per-call services.[2] Title I also set forth the original definition of ''pay-per-call services,'' which limited the term to certain specified services accessed through the use of a 900 telephone number.[3]

Titles II and III of TDDRA required the FTC to prescribe regulations governing various aspects of telephone-billed purchases, including pay-per-call services.[4] Title II of TDDRA directed the Commission to enact regulations governing the advertising and operation of pay-per-call services. Among other things, TDDRA specified that certain disclosures appear in all advertising for pay-per-call programs and in introductory messages (''preambles'') at the start of such pay-per-call programs. Title II also prohibited pay-per-call providers from engaging in certain practices, such as directing their services to children under 12 years of age, or providing pay-per-call services through an 800 number or other toll-free number. In addition, the statute directed pay-per-call providers to comply with any additional standards the Commission might prescribe to prevent abusive practices.[5]

Title III of TDDRA required that the FTC's regulations establish procedures for dispute resolution and for correcting billing errors in connection with telephone-billed purchases.

Both Title II and Title III directed the Commission to include provisions in its regulations that would prohibit acts or practices that evade the rules or undermine the rights provided to consumers by the statute.[6] Notwithstanding Section 45(a)(2) of Title 15,[7] TDDRA granted the FTC jurisdiction over common carriers in connection with their activities as service bureaus or pay-per-call providers, as well as in connection with any billing and collection activities undertaken on behalf of providers of pay-per-call services or other telephone-billed purchases.[8]

2. 900-Number Rule

On July 26, 1993, the FTC adopted its 900-Number Rule, 16 CFR Part 308; the Rule became effective on November 1, 1993.[9] Pursuant to TDDRA's requirements, the 900-Number Rule incorporated the definition of ''pay-per-call services'' set out in Section 228 of the Communications Act of 1934, thus limiting the applicability of the advertising and operating standards of the Rule to services accessed by dialing a 900 number.[10] Among other provisions, the Rule requires that advertisements for pay-per-call services contain certain disclosures of material

[1] This statement summarizes Congress' findings regarding the pay-per-call industry at the time it passed the legislation. For greater detail concerning the problems Congress found to be associated with pay-per-call services, *see* 15 U.S.C. 5701(b).

[2] Title I is codified at 47 U.S.C. 228. The FCC published its Notice of Proposed Rulemaking and Notice of Inquiry at 58 FR 14371 (March 17, 1993). The FCC's Rules are at 47 CFR 64.1501 *et seq.*

[3] 47 U.S.C. 228(i)(1). *See* note 14, *infra.*

[4] Title II of TDDRA is codified at 15 U.S.C. 5711–5714. Title III of TDDRA is codified at 15 U.S.C. 5721–5724.

[5] 15 U.S.C. 5711(a)(2)(J).

[6] 15 U.S.C. 5711(a)(4) and 5721(a)(1).

[7] Under that Section, ''common carriers subject to the Acts to regulate commerce'' are exempted from FTC jurisdiction to prohibit the use of ''unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.''

[8] 15 U.S.C. 5711(c) and 5721(c). The term ''telephone-billed purchase,'' as used in TDDRA, refers to a purchase of goods or services (other than telephone toll services) that is ''completed solely as a consequence of completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller.'' 15 U.S.C. 5724(1). The term includes all pay-per-call services.

[9] The Statement of Basis and Purpose and Final Rule were published at 58 FR 42364 (August 9, 1993).

[10] *See* note 14, *infra.*

information, including the cost of the call. This material information must also be included in an introductory message (preamble) at the beginning of any pay-per-call program where the cost of the call could exceed two dollars. The Rule requires that anyone who calls a pay-per-call service must be given the opportunity to hang up at the conclusion of the preamble without incurring any charge for the call. In addition, the Rule requires that all preambles to pay-per-call services state that individuals under the age of 18 must have the permission of a parent or guardian to complete the call.

The 900-Number Rule also establishes procedures for resolving billing disputes for telephone-billed purchases, such as pay-per-call services.[11] The Rule imposes certain obligations on entities that bill and collect for telephone-billed purchases, such as investigating and responding to billing disputes.[12]

3. Telecommunications Act of 1996 (''1996 Act'')

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (the ''1996 Act'')[13] to provide a regulatory framework for telecommunications and information technologies and services. Section 701(b) of the 1996 Act provides that:

Section 204 of [TDDRA] is amended to read as follows:

(1) The term 'pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934,[14] except that the [Federal Trade] Commission by rule may, *notwithstanding subparagraphs (B) and (C) of Section 228(i)(1) of such Act,* extend such definition to other similar services providing audio information or audio entertainment if the [Federal Trade] Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a) [of TDDRA]. [Emphasis and footnote added.]

The 1996 Act thus authorizes the FTC, through its 900-Number Rule, to extend the definition of the term ''pay-per-call services''—and, in effect, the Rule's coverage—to include certain audiotext[15] services that may use a dialing prefix other than 900[16] and services for which there is a charge that is greater than, or in addition to, the charge for transmission of the call.[17] If the FTC determines that such audio information and entertainment services are susceptible to the unfair and deceptive practices that are prohibited by its 900-Number Rule, the FTC has the authority to define those services as ''pay-per-call services'' and require them to comply with the Rule's provisions.

Section 701 of the 1996 Act also modified several provisions in Title I of TDDRA, directing the FCC to amend its regulations regarding pay-per-call services.[18] The FCC took action to implement this statutory mandate in July 1996.[19] In that proceeding, the FCC also proposed certain other modifications to its rules not expressly mandated by statute in an attempt to reduce fraudulent practices in the audiotext industry.

4. Initiation of Rule Review and Request for Comment

The 900-Number Rule provides that the Commission initiate a rulemaking review proceeding to evaluate the Rule's operation no later than four years after its effective date of November 1, 1993.[20] The Commission decided to conduct this review in conjunction with a Request for Comment to obtain information on whether, pursuant to Section 701 of the 1996 Act, the definition of ''pay-per-call services'' should be extended to cover audiotext services that fall outside the original definition. Thus, on March 12, 1997, the Commission published a notice in the **Federal Register** seeking comment on the overall effectiveness of the Rule and on whether the Commission should extend the definition of ''pay-per-call services'' to include a broader array of audio information and audio entertainment services provided through the telephone.[21]

Written and oral comment. In response to the notice, the Commission received 34 comments from industry, law enforcement, and consumer representatives, as well as from individual consumers.[22] Virtually all of the commenters praised the effectiveness of the 900-Number Rule in combating the deceptive and unfair practices that had plagued the 900-number industry before the Rule was promulgated. They also strongly supported the Rule's continuing role as the centerpiece in the effort to implement TDDRA's goals of protecting consumers and promoting the growth of the pay-per-call industry. As will be discussed in more detail *infra,* a number of commenters suggested modifications they believed would enhance the consumer protections offered by the Rule and reduce some of the burden on industry. In addition, the majority of commenters strongly urged the Commission to extend the Rule's definition of ''pay-per-call services'' to cover audio information and audio entertainment services provided by international direct dialing and by other non-900-number dialing patterns. Many commenters also supported additional restrictions on telephone-billed purchases that result in monthly or other recurring charges on consumers' telephone bills.

On June 19 and 20, 1997, staff of the Commission conducted a public workshop at the Federal Trade

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[11] The term ''telephone-billed purchase'' is defined more broadly than the term ''pay-per-call services,'' and thus includes within its scope all pay-per-call services. *See* note 8, *supra,* and discussion, *infra,* on the definition of ''telephone-billed purchase.''

[12] Other TDDRA protections were established by the FCC in that agency's rules set out at 47 CFR 64.1501 *et seq.* Under the FCC rules, a consumer's telephone service cannot be disconnected for failure to pay charges for a 900-number call, and 900-number blocking must be made available to consumers who do not wish to have access to 900-number services from their telephone lines.

[13] Pub. L. 104, 701, 110 Stat. 56 (1996) [codified at 47 U.S.C. 228 and at 15 U.S.C. 5714(1)].

[14] Section 228(i)(1) of the Communications Act of 1934, 47 U.S.C. 228(i)(1) provides that:

The term 'pay-per-call services' means any service—

(A) in which any person provides or purports to provide—

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation service; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of completion of the call;

(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) [47 U.S.C. 228(b)(5)].''

[15] The term ''audiotext'' describes audio information and entertainment services offered through any dialing pattern, including services accessed via 900 numbers as well as those accessed through international and other non-900-number dialing patterns.

[16] 47 U.S.C. 228(i)(1)(C).

[17] 47 U.S.C. 228(i)(1)(B).

[18] Congress changed the definition of ''pay-per-call services'' as it applies to the FCC's regulations under Title I of TDDRA by deleting the exception for ''tariffed services,'' without authorizing either the FTC or the FCC to further modify the Title I definition in any way. The FTC's authority to change the definition only impacts Titles II and III of TDDRA. Thus, the FTC's proposed definition of ''pay-per-call services'' will only apply to this Rule and not to any regulations promulgated by the FCC pursuant to Title I of TDDRA.

[19] Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, CC Docket No. 96-146, 11 FCC Rcd 14738 (1996) (''FCC Pay-Per-Call Order and Notice'').

[20] 16 CFR 308.9.

[21] 62 FR 11749 (March 12, 1997).

[22] A list of the commenters, and the acronyms that will be used to identify each commenter in this notice, is appended as Attachment A.

Commission in Washington, DC. Fourteen associations, individual businesses, consumer organizations, and law enforcement agencies, each with an affected interest and ability to represent others with similar interests, were selected to engage in the roundtable discussion.[23] The participants were encouraged to address each other's comments and questions, and were asked to respond to questions from Commission staff. The workshop was open to the public; oral comments from the public were invited and several individuals spoke during the course of the two-day workshop. The entire proceeding was transcribed and placed on the public record.[24] The public record to date, including the comments that were submitted in electronic form and the workshop transcript, has been placed on the Commission's web site on the Internet.[25]

Many commenters reported that the 900-Number Rule has been successful in reducing the abuses that led to the passage of TDDRA [26] and that, since the 900-Number Rule became effective, consumer confidence has increased [27] and complaints about 900-number services have decreased dramatically.[28] Commenters credited the 900-Number Rule with these positive developments.[29] Commenters generally agreed that the Rule has been effective yet balanced, without unnecessarily burdening the pay-per-call industry.[30] Recognizing that the Rule appears to have substantially reduced the abuses that had plagued the 900-number industry, commenters uniformly believe that it is important to retain the Rule.[31]

Despite the success of the Rule in correcting the abuses in the 900-number industry, complaints about other types of audiotext services (accessed via dialing patterns other than 900 numbers) continue to flood into the offices of local exchange carriers, consumer groups, and law enforcement agencies.[32] The majority of complaints now involve 800 numbers, international numbers, or other dialing patterns that do not use the 900-number prefix.[33] Many consumer and law enforcement agencies also have been receiving complaints from consumers who have discovered unexplained monthly recurring charges on their telephone bills for services that were never authorized, ordered, received, or used.[34]

Some commenters expressed the opinion that the effectiveness of the 900-Number Rule has led fraudulent operators to find alternate ways to market their services in order to evade the Rule's protections.[35] Conversely, some industry members argue that the high chargeback rates experienced by services offered through 900 numbers have driven providers to seek other methods of delivering their services and of billing and collecting for them. In addition, these commenters point to high transport rates charged by the interexchange carriers in the United States as a reason for the development of alternate ways to market and bill for audio information and entertainment services. Thus, these audio information or entertainment providers allege that by using non-900-number dialing patterns they can provide consumers with services that are similar or comparable to those offered through 900 numbers, but cost consumers less.[36] Consumer groups and law enforcement responded to this argument by alleging that providers who offer their services through dialing patterns other than the 900-number exchange can charge less for their services precisely because the non-900-number format enables providers to collect unauthorized and illegitimate charges from consumers without fear of chargebacks, because non-900 numbers do not provide the TDDRA protections to consumers.[37]

5. Notice of Proposed Rulemaking

Regardless of the factors that prompt providers to use alternatives to the 900-number dialing pattern to bill for their audiotext services, the question is whether these alternate billing methods undermine the rights that Congress intended for consumers to have under TDDRA. In TDDRA, Congress provided that consumers of audio information and entertainment services should be protected from unfair and deceptive practices and that they should have adequate rights of redress.[38] Congress also realized that it could not anticipate all provisions that might be necessary to prevent abusive practices. Therefore, TDDRA gave the Commission the flexibility to prescribe ''such additional standards'' as may be needed ''to prevent abusive practices.'' [39] In addition, in both Title II (advertising and pay-per-call standards) and Title III (billing and collection), Congress directed the Commission to include in its Rules provisions to ''prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers'' by the statute.[40]

The record developed in this matter, as well as the Commission's law enforcement experience, leave little doubt that many important consumer protections provided by TDDRA have been eroded. The Commission believes that the record supports the necessity of establishing additional standards to ensure that consumers receive the protections and rights that TDDRA intended. Accordingly, the Commission has determined to retain its 900-Number Rule, but proposes to revise the Rule. The Commission believes these revisions are necessary in order to ensure that technological innovations in the telecommunications industry do not undermine the rights of consumers or otherwise operate to destroy the credibility and confidence that

[23] The selected participants were: AT&T, FLORIDA, GORDON, ISA, ITA, MCI, NAAG, NCL, SW, PILGRIM, PMAA, SNET, TPI, and TSIA. Consumers Union also was selected as a participant, but was unable to send a representative to the workshop.

[24] References to the workshop transcript are cited as ''Tr.'' followed by the appropriate page designation. References to comments are cited as ''[acronym of commenter] at [page number].''

[25] The electronic portions of the public record can be found at http://www.ftc.gov/ftc/consumer.htm. The full paper record is available in Room 130 at the Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number: 202–FTC–HELP (202–382–4357).

[26] AARP at 1; AT&T at 2; FLORIDA at 4; GORDON at 1; ISA at 2; NAAG at 2; NCL at 2; PMAA at 1–2; SNET at 2–3; TPI at 2; and TSIA at 2–3.

[27] GORDON at 1; AT&T at 2; NAAG at 2; PMAA at 1–2; TPI at 2; TSIA at 2–3. TSIA believes that the requirements established by the FTC in its 900-Number Rule have benefitted consumers and enhanced the fairness and credibility of the audiotext industry. TSIA at 2–3.

[28] AT&T at 3; TPI at 2; AMERITECH at 2; GORDON at 1; FLORIDA at 10; SW at 4; SNET at 2–3; NAAG at 2; NCL at 2; US WEST at 4–5 (noting a ''materially significant reduction'' in 900-number complaints).

[29] According to one representative comment, the 900-Number Rule can be credited with ''eradicating abuses in the pay-per-call industry'' and helping to make 900 numbers ''a viable marketing and promotional tool for many legitimate marketers of consumer products and services.'' PMAA at 1–2.

[30] *See, e.g.,* PMAA at 1–2, 4; NCL at 2; ISA at 2.

[31] *See, e.g.,* FLORIDA at 4; GORDON at 1; NCL at 2; PMAA at 4.

[32] After an initial decrease in the number of pay-per-call complaints received by such organizations after the Rule became effective, the numbers soon began to increase. Although pay-per-call complaints dropped to 16th place in 1994 after the Rule became effective, by 1996 they had climbed back to 12th place. NCL at 2.

[33] ALLIANCE at 2–3; CINCINNATI at 1; FLORIDA at 4; NAAG at 1; NCL at 2; SW at 2; SNET at 3–4. NCL states that, in 1996, it received three times as many complaints about 800 numbers as it did about 900 numbers. NCL at 2.

[34] NCL at 3–4; SW at 3; Tr. at 382, 384, 498–504.

[35] ALLIANCE at 2–3; FLORIDA at 4; NCL at 2; NAAG at 1; SW at 2; SNET at 3–4.

[36] TSIA at 21.

[37] Tr. at 367–68, 372–74, 380–81, 388–460.

[38] 15 U.S.C. 5701(a)(7).

[39] 15 U.S.C. 5711(a)(2)(J).

[40] 15 U.S.C. 5711(a)(4) and 5721(a)(1). In Title II, Congress specifically directs the Commission to prohibit ''alternative billing or other procedures'' which are unfair or deceptive or undermine the rights provided to consumers under that Title. 15 U.S.C. 5711(a)(4).

consumers and vendors have come to expect from the legitimate pay-per-call industry.

By this document, the Commission is proposing revisions to its 900-Number Rule. The proposed changes to the Rule are made pursuant to the rule review requirements of the Rule,[41] and pursuant to the authority granted to the Commission by TDDRA to prevent abusive practices, to prohibit practices that evade the Commission's rules or undermine the rights of consumers, and to encourage the growth of the legitimate pay-per-call industry.[42] The proposed changes also are made pursuant to the authority granted to the Commission by Section 701(b) of the Telecommunications Act of 1996 Act to extend the definition of ''pay-per-call services'' to cover similar audio information and entertainment services that are susceptible to the unfair or deceptive acts or practices prohibited by the 900-Number Rule. As discussed in detail infra, the Commission believes the proposed modifications are necessary to ensure that the Rule fulfills the Congressional mandate in TDDRA that the FTC encourage the growth of the legitimate audiotext industry, while curtailing those practices that are abusive, unfair or deceptive, that evade the 900-Number Rule, or that undermine the rights of consumers provided by TDDRA. The Commission believes that the proposed modifications strike a balance between maximizing consumer protections and minimizing the burden on the audiotext industry.

Section B. Overview

1. Changes in the Marketplace

At the time the original Rule was promulgated, the only significant example of a ''telephone-billed purchase'' was a purchase of audiotext services over a 900 number. These services were (1) blockable under Title I of TDDRA, (2) covered by the advertising restrictions and free preamble disclosure requirements of Title II of TDDRA, and (3) fully protected by the dispute resolution procedures of Title III of TDDRA.

In the years since promulgation of the Commission's 900-Number Rule, the marketplace for telephone-billed purchases has changed in several significant ways:

Proliferation of audiotext transactions that use dialing patterns other than 900 numbers (such as international audiotext and audiotext provided over toll-free numbers). The development of non-900-number audiotext services raises consumer protection implications because: (1) these transactions are not blockable in the manner contemplated by Title I of TDDRA; (2) they are not subject to the advertising requirements and preamble disclosure requirements provided by Title II of TDDRA; and (3) in instances where the charge for the cost of the information or entertainment is hidden within the cost of a toll call (*i.e.*, international audiotext),[43] these transactions are not subject to the dispute resolution mechanisms provided by Title III of TDDRA.

Emergence of a market for non-audiotext telephone-billed purchases based on ANI. More recently, there has been a sharp rise in the development of a market for non-audiotext telephone-billed purchases that are in many cases not directly related to telecommunications services or sold by common carriers. For example, consumers can now purchase voice mail, Internet access, club memberships, and a host of other services from vendors who charge the consumer's telephone bill, often based solely on Automatic Number Identification (ANI).[44] For these non-audiotext transactions, the telephone is merely the instrument of purchase, and the product or service may have little or nothing to do with the telephone. Rather, the telephone becomes much like a credit card data capture terminal, but without the security or accompanying dispute resolution procedures and other consumer protections afforded to consumers who make purchases with credit cards.

The use of the telephone bill to charge for services, products, and memberships, even without the use of ANI. Consumers can sign up for a service in person, and charge the service to a telephone number (their own or someone else's), merely by filling in a phone number on a form. This has resulted in two newer types of unauthorized charges: (1) unauthorized charges billed to a telephone subscriber for a benefit received by someone else, such as entering a sweepstakes to win a prize; and (2) unauthorized charges to consumers who are unaware that by filling out a form, they are deemed to have authorized a telephone-billed purchase. These practices are a growing part of a larger problem known as ''cramming''—the practice of placing unauthorized and deceptive charges on consumers' telephone bills.

Emergence of a new type of service bureau providing critical billing and collection functions. Service bureaus now provide much more than the access to voice storage and telephone service that they typically provided when the original Rule was promulgated. In the current marketplace, a key function of service bureaus is to provide a contractual framework for billing and collection. As the recent Commission and State cramming cases have shown, some service bureaus, known as ''billing aggregators'' (*i.e.*, billing clearinghouses) act as intermediaries between vendors and the local telephone companies (''local exchange carriers'' or ''LECs''). These service bureaus process their client-vendors' billing data into the electronic format required by the LEC, contract with the LECs to have their client-vendors' charges appear on line subscribers' telephone bills, and act as conduits to the vendor for revenues collected by the LECs from consumers for the vendors' services. In addition, service bureaus also commonly structure revenue-sharing arrangements with foreign telephone companies and provide services to bill consumers by direct mail.

Increase in the level of ''chargebacks'' for 900 numbers. Audiotext vendors report difficulty collecting valid 900-number charges from consumers. They report that, when LECs are unsuccessful in collecting these legitimate charges, the vendors have great difficulty in obtaining the information they need to collect the charges on their own.

2. Summary of Proposed Major Changes to the Rule

Each of the changes in the marketplace described above has led to the growth of deceptive and fraudulent practices in areas not adequately addressed by the original Rule. The proposed Rule is intended to address these deceptive or abusive practices by adapting the Rule to respond to the changes in the marketplace in a manner consistent with the original intent of Congress. Each of the proposed changes is discussed in detail in this Notice. Additionally, Commission staff has prepared an unofficial redlined version

[41] 16 CFR 308.9.

[42] 15 U.S.C. 5711(a)(2)(J), 5711(a)(4), and 5721(a)(1).

[43] International audiotext services are accessed by dialing international telephone numbers. These services are beyond the current scope of the Rule because they are not provided over 900 numbers, and because the resulting charges are not greater than or in addition to the charge for transmission, a requirement for pay-per-call services contained in the TDDRA definition. 47 U.S.C. 228(i). To receive payment for their services, international audiotext operators enter revenue-sharing arrangements with foreign telephone companies, and thus obtain a portion of the funds paid by callers to the telephone companies for transmission of international calls to the audiotext services.

[44] Automatic Number Identification (''ANI'') is technology similar to ''Caller-ID'' that permits the recipient of a telephone call to identify (or ''capture'') the telephone number from which a call is made.

of the proposed Rule, showing proposed additions and deletions, which is available on the Commission's Internet site at www.ftc.gov. A summary of the proposed major changes to the Rule is set forth below:

Coverage of Rule: The proposed revisions to the Rule would ensure that TDDRA protections apply to the offer and sale of every audiotext service, regardless of the dialing pattern used to access the service. In addition, the revisions would ensure that international audiotext services could not be offered in a manner that evades TDDRA's dispute resolution procedures.

This would be achieved in two ways. First, the proposal would expand the Rule's definition of ''pay-per-call services.'' Second, the proposal would prohibit the practice of hiding the cost of an audiotext service within a regulated toll charge for either a domestic or international long-distance call.

These proposed revisions address abuses that have arisen in connection with audiotext services offered through international numbers and other non-900 dialing patterns. Chief among these abuses is nondisclosure (or inadequate disclosure) of cost and other material information to consumers before they incur charges for an audiotext service. The revised Rule also would give consumers protection against charges for audiotext services that cannot be blocked from their telephone lines. In addition, the proposed revisions would ensure that consumers who incur charges for an audiotext service can use TDDRA procedures to dispute such charges, regardless of the number dialed to access the service.

Toll-free Numbers: The original Rule prohibits charging consumers for an audiotext service accessed by dialing an 800 or other toll-free number, but it creates a limited exception to this prohibition where the consumer enters into a prior agreement (a ''presubscription agreement'') with the provider to pay for the service. The proposed Rule tightens this exception to prohibit certain abusive practices that have arisen in connection with billing for audiotext services accessed by dialing toll-free numbers. These abuses include sham presubscription agreements, and ineffective methods of preventing unauthorized access to services under presubscription agreements. The proposed Rule would require an audiotext provider, before permitting access to a service, to have a contractual agreement with the party responsible for paying for the service. The provider would be required to send that party a written statement of all material terms and conditions of the agreement, along with a ''personal identification number'' (''PIN'') to prevent unauthorized access to the service.

Consumers cannot block calls from their lines to toll-free telephone numbers, so they cannot block access to audiotext services that are reached by dialing toll-free numbers. Thus, the proposed revisions to the requirements for presubscription agreements protect consumers from incurring charges for services they cannot block. The proposed revisions provide this protection by requiring that a contract exist between the provider and the person responsible for paying for the service before the service is provided, and by requiring an effective method to prevent unauthorized access to the contracted service.

Finally, the proposed Rule gives consumers additional rights to dispute charges for audiotext accessed by dialing toll-free numbers. If consumers have not entered into a ''presubscription agreement'' that satisfies the proposed Rule's definition of that term, but are charged for audiotext services accessed through a toll-free number, the revised Rule permits consumers to challenge such charges as ''billing errors,'' and the Rule's dispute resolution rights and protections would apply.

Unauthorized Charges, or ''Cramming'': Unauthorized charges that are ''crammed'' on to consumers'' telephone bills generally are for telephone-billed purchases that cannot be blocked by 900-number blocking, and many of them are recurring charges. The proposed Rule takes a four-fold approach to the problem of cramming.

First, the proposed Rule provides that any telephone-billed purchase, other than one that arose from a blockable (*i.e.*, 900-number) transaction, requires the express authorization of the person to be billed for the purchase. The proposed Rule also prohibits vendors, service bureaus, and billing entities from collecting or attempting to collect for such unblockable telephone-billed purchase charges where the vendor, service bureau, or billing entity knew or should have known that the purchase was not authorized by the person who was the target of the collection efforts. The revised Rule would create strong incentives for vendors, service bureaus, and billing entities who offer telephoned-billed transactions that cannot be blocked to ensure that such transactions are authorized by the party who is to be billed for them.

Second, vendors would be prohibited from causing consumers to receive monthly or other recurring charges for pay-per-call services in the absence of a presubscription agreement with the person to be billed for the service. Thus, a single call to a pay-per-call service could no longer result in a consumer being enrolled in a ''psychic club'' or other service plan which would result in recurring fees. The vendor would be required to get advance authorization of the person to be billed for any pay-per-call service that resulted in recurring fees, and would be required to send that consumer a written copy of the agreement before any chargers could accrue.

Third, consumers would be able to dispute unauthorized charges ''crammed'' on to their phone bills and have these charges removed. Under the proposed Rule, when a consumer disputes a charge for a service that cannot be blocked,[45] the billing entity, in order to sustain that charge, must provide the consumer with actual proof that the consumer expressly authorized the transaction that resulted in the charge. Similarly, under the proposed Rule, when a consumer disputes a charge purportedly resulting from a presubscription agreement, the billing entity cannot sustain the charge absent evidence of a valid presubscription agreement with the person being billed. Unless the billing entity provides such proof, the charge must be forgiven. These revisions are intended to deter the current widespread problem of cramming.

Fourth, the proposed Rule provides dispute resolution protections for all transactions that result in non-toll charges on a subscriber's phone bill, even if the charges for such purchases did not result from a telephone call and were not based on ANI capture. This would be accomplished by expanding the definition of ''telephone-billed purchase'' to encompass all such transactions. This revision would ensure that a consumer who has an unauthorized charge on his or her phone bill—regardless of whether it arose from a telephone call—would be able to contest the charge through the Rule's dispute resolution procedures. This revision would address the growing problem of unauthorized charges being ''crammed'' on to a consumer's telephone bill as a result of filling out a sweepstakes entry form or some action other than placing a telephone call.

Liability of Billing Entities and Billing Aggregators for Unauthorized Charges:

[45] The proposed Rule identifies these as charges that cannot be blocked in advance by 900-number blocking, or TDDRA blocking, as provided by 47 U.S.C. 228(c).

The proposed Rule would impose liability on billing entities and billing aggregators for providing unscrupulous vendors the sine qua non for cramming—access to the telephone billing and collection system. These parties would be unable to evade responsibility under the revised Rule for processing charges and inserting them in consumers' monthly telephone billing statements on behalf of unscrupulous ''crammers'' and other vendors who blatantly violate the Rule.

Holding billing aggregators responsible for their part in cramming would be accomplished by amending the Rule's definition of ''service bureau'' to specifically include billing aggregators. This ensures that billing aggregators would be liable for civil penalties any time they ''knew or should have known'' that their client-vendors were in violation of the Rule. Billing entities' responsibilities would be increased via a proposed provision that would hold them accountable for billing a consumer for unblockable telephone-billed purchases when they knew or should have known that the transaction was not authorized by the consumer being billed.

The proposed revisions addresses the problem of billing entities and billing aggregators knowingly profiting from, facilitating, encouraging, and yet evading responsibility for, illegal practices such as cramming.

Disputed Charges: The proposed Rule would ensure that any time a consumer disputes a charge for a telephone-billed purchase, the consumer will not be required to pay that charge until he or she is provided with both documentary evidence of the validity of the charge and a written explanation describing why the charge is valid.

This would be accomplished by specifically prohibiting collection of a charge for a telephone-billed purchase that is in dispute unless the validity of the charge has been investigated, and unless the consumer has received an explanation and documentary evidence supporting the charge's validity. The Rule would also be modified to give more specific guidance as to what the requirement (present in the current Rule) for an ''investigation'' entails. To prevent ''passing the buck'' among multiple parties involved in collecting a charge for a telephone-billed purchase (e.g., the LEC that prepares and sends the consumer a phone bill, the billing aggregator that forwards billing data from the vendor to the LEC, and the vendor that handles the transaction from which the charge arises), the proposed Rule imposes a new requirement that these multiple parties (1) designate which of them will bear ultimate responsibility for receiving and responding to billing disputes, and (2) disclose that designation on the telephone bill.

These revisions would address the problem experienced by many consumers who attempt to dispute a charge for a telephone-billed purchase, only to be faced with collection action by a party other than the original billing entity, and who are passed from one billing entity to another without ever achieving resolution of their dispute. Multiple parties involved in billing and collection could not hand a consumer off from one to another, but instead would be required to respond to the consumer's dispute.

Deceptive Statements to Billing Entities Conducting Investigations: The proposed Rule would prevent vendors, service bureaus, and providing carriers from using deceptive tactics in attempting to sustain an illegitimate charge for a telephone-billed purchase.

This would be accomplished by a provision in the proposed Rule that would prohibit a vendor, service bureau, or providing carrier from providing false or misleading information to a billing entity conducting an investigation of a disputed charge for a telephone-billed purchase. Thus, practices such as falsely representing to a billing entity that a consumer called a 900 number when, in fact, the consumer called a toll-free number, would be prohibited by the proposed Rule.

Solicitations Transmitted by Pager or Facsimile: The proposed Rule addresses the use of pagers and facsimile machines to solicit calls to audiotext services. These two techniques have been used deceptively in connection with audiotext services that are accessed through numbers other than 900 numbers and that therefore cannot be distinguished from non-audiotext numbers. The proposed Rule would require disclosure of cost and other material information in any facsimile-transmitted or pager-transmitted solicitation to call a pay-per-call service.

The proposed Rule would accomplish this by adding two new provisions, one expressly requiring the same disclosures in pager solicitations that are required in advertisements in other media, and another expressly requiring the same disclosures in facsimile solicitations that are required in advertisements in other media.

The disclosure requirement for pager solicitations of calls to pay-per-call services will remedy the deception that occurs when a consumer receives a pager message and reasonably assumes that an urgent business or personal reason exists to call a number that turns out to access a pay-per-call service. The consumer who calls such a number in response to a page may incur charges for audiotext services without intending to do so. This Rule modification will eliminate this problem. Similarly, the disclosure requirements for facsimile solicitations will address the increasing problem of consumers being urged by facsimile messages to call numbers that turn out to be pay-per-call services, without adequate disclosures of cost and other material information about the advertised service.

Section C. Discussion of Proposed Revisions to the Rule

1. General Changes

Title of the Rule. The Commission proposes to change the title of the Rule to the ''Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases.'' The current title (''Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992'') does not adequately describe the purpose of the Rule. The Commission believes that it is important for the industry and consumers to recognize that the Rule provides more than just pay-per-call service standards. The Rule also creates a structure for resolving billing disputes that applies to a broad array of telephone-billed purchase transactions. The Commission believes that the title ''Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases'' more accurately describes the substance of the Rule.

Organization of the Rule. The Commission proposes to reorganize the original Rule in several ways to make it easier to read and understand. In the original Rule, Section 308.2 defined terms relating to the advertising and operation of pay-per-call services, while Section 308.7 defined terms relating to the billing and collection of telephone-billed purchases. The Commission proposes moving all of the Rule's definitions into a single section, proposed Section 308.2.

The proposed Rule also rearranges the order of several other provisions, and divides the Rule into four subparts in order to improve its organization and to provide greater clarity: Subpart A, Scope and Definitions; Subpart B, Pay-Per-Call Services; Subpart C, Pay-Per-Call Services and Other Telephone-Billed Purchases; and Subpart D, General Provisions. The Commission also proposes dividing Sections 308.3 (Advertising of pay-per-call services)

and 308.5 (Pay-per-call service standards) of the original Rule into several smaller sections, each dealing with a discrete subject. This approach allows provisions dealing with specific subjects (e.g., children's advertising or liability for refunds) to be more easily identified within the Rule.

Global Wording Changes. The Commission decided to make several wording changes throughout the proposed Rule to standardize the usage of specific words and phrases, to more accurately reflect the extended coverage of the proposed Rule, and to reflect changes in technology since the original Rule was promulgated. Each change is discussed below.

(1) Caller, consumer, and customer. The original Rule used three terms to describe the individual to be protected by the Rule's requirements—''consumer,'' ''caller,'' and ''customer.'' The Commission proposes to change the Rule's usage of these three words. In most cases, the word ''consumer'' has been replaced by one of the other terms because the term ''consumer'' is not sufficiently precise to describe the intended beneficiary of the Rule's protections. The terms ''caller'' and ''customer'' better reflect the purpose and intent of the various provisions. For example, the proposed Rule uses the word ''caller'' in provisions that regulate preamble disclosures because the person making the call is the beneficiary of the protections in those sections. On the other hand, the dispute resolution provisions afford rights to the ''customer,'' a term that includes both the caller and the person who receives the billing statement. In other provisions, such as the definition of ''presubscription agreement'' or ''personal identification number,'' the more generic term ''consumer'' has been retained because in those instances ''caller'' or ''customer'' would be too narrow. In some instances, the proposed Rule clarifies that the person referred to by the Rule is the person to whom the billing statement has been, or will be, directed.[46]

(2) Vendor. The term ''vendor'' in the original Rule was used in the billing and collection section (Section 308.7 of the original Rule) to describe a person or entity that offers goods or services through a telephone-billed purchase. The term ''provider of pay-per-call services'' was used in the sections of the Rule regulating advertising and operation of pay-per-call services (Sections 308.2 through 308.6). Even under the original Rule, a ''provider of pay-per-call services'' was a ''vendor'' because all pay-per-call services were telephone-billed purchases. The proposed Rule simplifies the terminology by using ''vendor'' to refer to all providers of telephone-billed purchases, including all providers of pay-per-call services.

(3) Use of 888 and 877 numbers. Since the original Rule was promulgated, the use of toll-free ''888'' and ''877'' numbers has grown. Therefore, the proposed Rule has added ''888'' and ''877'' to those provisions of the Rule that deal with the use of toll-free numbers.[47]

2. Proposed Revisions to Specific Provisions

The proposed Rule makes no substantive revisions to the following sections of the original Rule, apart from renumbering and any of the global wording changes discussed above that might affect these sections: 308.3(e), 308.4, 308.5(h), 308.5(k), and 308.8.[48]

Subpart A—Scope and Definitions

Section 308.1 Scope of Regulations

The proposed Rule adds a citation to the Telecommunications Act of 1996.

Section 308.2 Definitions

The definitions that formerly appeared in the billing and collection section of the original Rule have been moved to Section 308.2 of the proposed Rule, which contains all definitions. The definitions have been reordered alphabetically and renumbered accordingly. The following definitions from the original Rule are unchanged, apart from renumbering: ''bona fide educational service,'' ''Commission,'' ''program-length commercial,'' ''providing carrier,'' ''reasonably understandable volume,'' ''slow and deliberate manner,'' and ''sweepstakes.''

(1) Section 308.2(a)—Billing entity. The proposed Rule clarifies that the term ''billing entity'' covers a person who transmits any statement of debt to a customer for a telephone-billed purchase, including, but not limited to, a telephone bill. The definition of ''billing entity'' is critical to the dispute resolution process governed by Section 308.20 of the proposed Rule because all persons and entities that fall within the meaning of the term ''billing entity'' will be required to comply with the steps set forth in that section. This proposed change recognizes that multiple parties often play a role in the billing and collection of charges for telephone-billed purchases. The proposed modification helps preserve the consumer's billing dispute rights in situations where a disputed charge for a telephone-billed purchase is passed from one billing entity to another. Under the original Rule, this practice often allowed the consumer's rights to be extinguished.

The revision to the definition of ''billing entity'' is designed to cover all of the participants in the typical billing and collection process for telephone-billed purchases. In most cases, the LEC sends the initial billing statement to the consumer. On that billing statement, the LEC provides the disclosures about consumers' rights and obligations regarding billing errors, as required by original Section 308.7(n). Once a consumer disputes a charge, the other participants in the billing and collection process (i.e., the vendor or service bureau) may attempt to collect the disputed charge by calling the consumer and making oral statements that the consumer has an obligation to pay.

The proposed Rule clarifies that any communication to a consumer regarding an alleged debt will bring a person within the definition of ''billing entity,'' as long as the communication contains a statement of debt involving a telephone-billed purchase. Thus, the proposed Rule ensures that, where multiple entities (including LECs, vendors, service bureaus, and third-party debt collectors) are involved in collecting a charge for a telephone-billed purchase, each of those entities will be considered a billing entity and therefore must afford a consumer his or her dispute resolution rights under the Rule.

(2) Section 308.2(b)—Billing error. This definition is also a key concept underlying the dispute resolution provisions set forth in proposed Section 308.20. Under that section, a billing entity will be required to refund any disputed amount on a consumer's bill, once the consumer has invoked his or her rights by submitting a ''billing error notice,'' unless the billing entity can provide evidence to the consumer that there was no billing error and that the disputed amount is a legitimate debt.[49]

[46] *See, e.g.,* Section 308.2(j)(1).

[47] Proposed Sections 308.2(b)(4), 308.7(e), and 308.13 contain those references.

[48] These sections of the original Rule correspond to the following sections of the proposed Rule: Original § 308.3(e) is now proposed § 308.5 (Advertising to children prohibited); original § 308.4 is now proposed § 308.8 (Special rule for infrequent publications); original § 308.5(h) is now proposed § 308.11 (Prohibition on services to children); original § 308.5(k) is now proposed § 308.15 (Refunds to customers); and original § 308.8 is now proposed § 308.21 (Severability).

[49] If a disputed charge is found not to be a ''billing error,'' the sole consequence is that the Rule does not require the billing entity to refund the consumer's money. The fact that a charge is not a ''billing error'' in no way affects any rights that a consumer may have under State law to dispute that

Original definition. The original Rule delineates eight different types of billing errors. Six of these billing errors track almost verbatim provisions in TDDRA that define the term ''billing error'' in a similar list.[50] A seventh billing error [51] was added to the statutory definition pursuant to the Commission's authority to create additional billing errors,[52] and in the eighth instance, the Commission determined that the Rule should not track the statute word-for-word. In that instance, the statute stated that a billing error occurred when a telephone-billed purchase was not made by the customer. By contrast, the original Rule provided that a billing error occurred when the telephone-billed purchase was not made by the customer nor made from the customer's telephone.[53]

As a result of that modification, under the original Rule, a consumer was not entitled to dispute a telephone-billed purchase made from that consumer's telephone on the ground that it was unauthorized. The Commission refined the statutory definition of ''billing error'' in this way because, at the time the original Rule was promulgated, virtually all ''telephone-billed purchases'' were purchases of pay-per-call services, accessed by dialing 900 numbers. Because TDDRA mandated that 900-number blocking be made available to consumers by common carriers,[54] the Commission reasoned that TDDRA empowered the consumer to block access to pay-per-call services. The Commission therefore believed it unnecessary to make available in the case of alleged unauthorized telephone-billed purchases (in most cases for 900-number services) the dispute resolution mechanisms appropriate to other kinds of disputed charges.[55]

Changes in the marketplace. In the years since adoption of the original Rule, the marketplace has changed. In addition to pay-per-call services, many other goods and services are now the subject of telephone-billed purchases. More important, billing based on ANI for services accessed or received through dialing patterns other than 900 numbers (*e.g.*, audiotext provided over international or toll-free numbers) has become more widely used. These dialing patterns are not blockable in the manner intended by TDDRA. Thus, it is clear now that it is possible to offer telephone-billed purchases through methods that cannot be blocked as TDDRA intended.

In addition to audiotext services, many other products and services, including club memberships, voice mail, Internet access, personal 800 numbers, and pagers, are now available through telephone-billed purchases.[56] Though some of these services are offered in a non-deceptive manner, in many instances, consumers have been charged for these miscellaneous services on their telephone bills even though they had never authorized or ordered the goods or services for which they were being charged.[57] These unauthorized charges have been characterized by the popular press as ''cramming.'' In theory, there is no limit to the types of products or services that may be billed on consumers' telephone statements.

The Commission has received approximately 9,000 complaints about cramming since October 1997. Cramming has become the fifth most common complaint by consumers, as reflected in consumer contacts with the FTC through its Consumer Response Center. Based on the record in this rule review proceeding, on the consumer complaints received about this problem, and on recent State [58] and Commission [59] law enforcement experience, the Commission believes that unauthorized charges pose a very serious threat to consumers in the telephone-billed purchase marketplace, and thus a corresponding threat to the healthy growth of this innovative purchasing mechanism.

Proposed definition. The first eight billing errors listed in Section 308.2(b) of the proposed Rule remain virtually identical to those in the original Rule.[60] The proposed Rule, however, adds three additional billing errors to make newly-emerging problems associated with unauthorized charges subject to the Rule's dispute resolution procedures.[61] A discussion of these provisions follows.

Section 308.2(b)(9)—Charges resulting from a purported presubscription agreement that does not meet the requirements of the Rule. This proposed Section specifies that the term ''billing error'' includes any charge incurred pursuant to a purported presubscription agreement that does not meet the requirements of the proposed Rule's definition of that term.[62] This would address a significant problem that has surfaced since the Rule was promulgated, whereby consumers who have never entered into a presubscription agreement with a

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charge or to receive a refund of that charge. In addition, under State law a consumer may have rights to dispute charges that are not ''billing errors.'' The Commission's Rule cannot by law supersede any rights a consumer may have under State law to dispute such charges, unless such law is inconsistent with the FTC's Rule. 15 U.S.C. 5722(a).

[50] 15 U.S.C. 5724(2)(B–G).

[51] 16 CFR 308.7(a)(2)(viii).

[52] 15 U.S.C. 5724(2)(H).

[53] The statute provided that a billing error occurred when there was ''[a] reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.'' 15 U.S.C. 5724(2)(A). By contrast, the original Rule defined the equivalent billing error as a ''[a] reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.'' 16 CFR 308.7(a)(2)(i) [Emphasis added].

[54] 47 U.S.C. 228(c).

[55] The fact that a consumer could not dispute these charges under the Rule in no way affected the consumer's right under State law to refuse to pay for a service that was not ordered.

[56] Such services, often referred to as ''enhanced services,'' are billed on a telephone bill through the use of the 42–50–01 Exchange Message Interface (''EMI'') billing records.

[57] *FTC* v. *Hold Billing Services, Ltd.*, No. SA98CA0629 FB (W.D. Texas, filed July 19, 1998).

[58] *See, e.g., State of Wisconsin* v. *Telecom Operator Service d/b/a USP&C Operator Services*, No. 98 CV 2319 (Cir Ct. Milwaukee County, filed March 27, 1998; amended complaint filed July 27, 1998) (continuing to bill line subscribers who deny ordering services or who request backup regarding charges); *People of Illinois* v. *RCP Enterprises Group, et. al.*, No. 98 CH 112 (Cir. Ct., 7th Jud. Cir.—Sangamon County, filed March 19, 1998) (using 1/16-inch print on opposite side of sweepstakes entry form as authorization to bill consumer for calling card services); *People of Illinois* v. *BLJ Communications*, No. 98 CH 113 (Cir. Ct., 7th Jud. Cir.—Sangamon County, filed March 19, 1998) (sustaining charges for unordered pre-paid calling cards despite informing consumers that credits would be issued); *People of Illinois* v. *Coral Communications Inc.*, No. 98 CH 3526 (Cir. Ct., Ch. Div.—Cook County, filed March 1998) (using sweepstakes entry forms as authorization to bill for pre-paid calling cards and voice mail, and sustaining charges for unordered pre-paid calling cards and voice mail despite informing consumers that credits would be issued); *People of Illinois* v. *New World Telecommunications Inc.*, No. 98 CH 115 (Cir. Ct., 7th Jud. Cir.—Sangamon County, filed March 19, 1998) (billing line subscribers for voice mail which they did not order, and failing to provide effective billing dispute mechanism); *State of Missouri ex. rel. Nixon* v. *Coral Communications Inc.*, No. 98 CC 716 (Cir. Ct., St. Louis County, filed 1998) (using miniature typeface on contest entry forms as authorization to bill for pre-paid calling cards and voice mail, and sending follow-up miniature typeface ''junk mail'' postcards as confirmation and last chance for consumer to cancel services).

[59] *See, e.g., FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed Apr. 22, 1998); *FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998); and *Hold Billing Services.*

[60] The only change is that the proposed Section 308.2(b)(8) slightly modifies the language in Section 308.7(2)(viii) of the original Rule to more clearly convey that it is a billing error to identify charges for telephone-billed purchases in a manner that violates the Rule's requirements for billing statement disclosures.

[61] Specifically, these amendments are proposed pursuant to the Commission's authority under 15 U.S.C. 5724(2)(H) to prescribe additional billing errors, and pursuant to its rulemaking authority under 15 U.S.C. 5711(a), 5721(a), and 5723.

[62] ''Presubscription agreement'' is defined in the proposed Rule at § 308.2(j).

provider are charged for audiotext services that are, or allegedly have been, provided pursuant to a presubscription agreement.[63]

This situation occurs when a telephone line subscriber is billed for charges under a presubscription agreement entered into by some other party who dialed an 800 or other toll-free number using the subscriber's telephone.[64] The Commission continues to be concerned that presubscription agreements not be mere shams to justify billing a consumer for calls to toll-free numbers, or for services sold under an ''agreement'' that is based solely on the fact that a telephone call was placed from that consumer's telephone (*i.e.*, based solely on ANI capture).[65] The proposed new definition of presubscription agreement is based on this concern, and the corresponding billing error contained in Section 308.2(b)(9) provides recourse for consumers who have been wrongly billed for telephone-billed purchases resulting from purported presubscription agreements entered into by another party, or resulting from purported presubscription agreements [66] that otherwise do not meet the requirements of the Rule.

Section 308.2(b)(10)—Unauthorized charges not avoidable by blocking. Section 308.2(b)(10) of the proposed Rule would treat as a billing error any charges on a customer's billing statement that were ''not expressly authorized by that customer'' and that were not ''blockable pursuant to 47 U.S.C. 228(c).'' [67] This provision would enable a consumer to dispute a charge and to receive a refund when a charge was not authorized by that consumer, and the charge would not have been avoided had the consumer elected TDDRA blocking. This proposed billing error dovetails with proposed Section 308.17, which explicitly requires the ''express authorization'' of the person to be billed for any telephone-billed purchase that is not avoidable by TDDRA blocking.

The Commission does not propose revising the definition of ''billing error'' to bring in all unauthorized telephone-billed purchase charges. The Commission believes that this would sweep too broadly. In many instances, consumers still have a practical, simple, and cost-free method of avoiding a large category of unauthorized telephone-billed purchases—namely, blocking of services accessed through 900 numbers.[68] Generally, where 900-number blocking would have been effective to enable a consumer to avoid an unauthorized charge, the Commission believes it would be an undue burden on billing entities to require them to determine if such charges were, in fact, authorized.[69]

In situations where audiotext services are offered through an unblockable dialing pattern, however, a consumer has no means to protect herself from being billed for charges that result from another person accessing the service using her telephone. Many of the commenters and workshop participants identified this as a significant problem and a source of numerous complaints.[70] Where TDDRA blocking cannot effectively prevent access to telephone-billed purchasing, the vendor, service bureau, and billing entity should have the obligation to ensure that the line subscriber has expressly authorized the purchase. Under these circumstances, consumers who believe that they have been billed for an unauthorized charge should have the right to dispute the charge under proposed Section 308.20, and to receive proof of authorization before collection activities continue.

Some commenters urged that the Commission require that all audiotext services be provided through the 900-number dialing platform.[71] Instead, the Commission proposes a more flexible approach—specifying that it is a billing error if the consumer receives charges for a telephone-billed purchase that the consumer did not authorize, and the telephone-billed purchase could not have been prevented by TDDRA blocking. This will create an incentive for providers to use a dialing platform that is subject to TDDRA-blocking, because by using such a dialing platform, these providers will not be obligated under the proposed Rule to secure evidence that such charges were expressly authorized by the person being billed.

The Commission uses the term ''express authorization'' in describing this billing error to indicate that it is not sufficient for a provider to demonstrate that the telephone of the consumer being billed was the telephone used to make the call that resulted in a telephone-billed purchase. In order to sustain the charge, the provider must show tangible evidence that the person being billed for the telephone-billed purchase actually consented to the charge.[72]

Section 308.2(b)(11)—Inconsistency with blocking option selected. The Commission is aware of complaints from consumers who allege that 900-number calls have been made from their telephones even though the consumer had previously opted to have a 900-number block on their telephone.[73] Section 308.2(b)(11) of the proposed Rule addresses this situation by specifying that it is a billing error when a consumer receives a telephone bill containing a charge that is inconsistent with a blocking option already selected by the consumer. This billing error will provide the consumer with a means to challenge such a charge and receive a credit or refund if in fact the consumer had already elected to block access to that type of service or dialing pattern.

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[63] *See, e.g., Interactive Audiotext Services. See, also,* FLORIDA at 8; NCL at 4–5; NAAG at 11; Tr. at 169, 193–94.

[64] *See, e.g., Interactive Audiotext Services.* In its comment, NCL stated that most of the audiotext-related complaints they receive involve 800 numbers. NCL at 2.

[65] *See, e.g., U.S.* v. *American TelNet, Inc.*, No. 94–2551 CIV–NESBIT (S.D. Fla., filed Nov. 30, 1994). In that case, the Commission obtained $2 million in redress and a civil penalty of $500,000 against American TelNet for charging consumers for information or entertainment services accessed by calling 800 numbers, in violation of the Rule's requirements.

[66] For there to be a ''purported'' presubscription agreement, the vendor need not explicitly claim that a charge is based on a presubscription agreement. For instance, where a consumer is charged without authorization for a service for which the proposed Rule requires a presubscription agreement (*e.g.*, monthly or other recurring pay-per-call service charges), the consumer can make use of this billing error to dispute the charge.

[67] Proposed Section 308.2(b)(10). Only the form of blocking specified by Congress in TDDRA, codified at 47 U.S.C. 228(c), will satisfy the requirements of this subsection.

[68] Many commenters noted that the availability of 900-number blocking has resulted in a dramatic decrease in the number of complaints about 900-number services. AMERITECH at 2; AT&T at 3; FLORIDA at 10; SW at 4; SNET at 2–3; NCL at 2.

[69] However, where a single call to a blockable 900 number results in monthly or other recurring charges on a consumer's telephone bill, the Commission does not believe that it would be an undue burden for a billing entity to show proof of authorization. A single call to a pay-per-call service is simply not enough for a vendor, service bureau, or billing entity to assume that the telephone subscriber has authorized his or her enrollment in a ''psychic club'' or other similar service plan. The Commission proposes requiring that these charges be provided only pursuant to a presubscription agreement that meets all of the requirements of the proposed Rule's definition of that term. See proposed Section 308.14.

[70] FLORIDA at 8; NCL at 4–5; NAAG at 11; Tr. at 169, 193–94, 472.

[71] *See, e.g.*, SW at 2; SNET at 2; AT&T at 29–30.

[72] For example, a tape recording of the person who was billed, agreeing in advance to pay for the charge after hearing the material terms of the agreement, would constitute evidence of such authorization sufficient to show that this billing error did not occur. Of course, if the voice recording was not of the person being billed, the vendor would not be able to sustain the charge. For additional examples of evidence of ''express authorization,'' see discussion of proposed § 308.17, *infra*.

[73] TURJANICA at 1. *See also*, Transcript of ''FCC Public Forum on Local Exchange Carrier Billing for Other Businesses,'' (June 24, 1997), p. 113.

Under this scenario, regardless of the reason for the block being ineffective (*i.e.*, because the block failed or because someone using the consumer's telephone ''dialed around'' the block),[74] the consumer would be entitled to a credit or refund if they had elected to block such calls and the block was supposed to be in place at the time the call was placed. The Commission believes that once a consumer has taken the affirmative step to elect TDDRA blocking, this should be interpreted as an affirmative statement that the consumer does not authorize any telephone-billed purchases that should have been blocked by this action. If the TDDRA blocking system fails, the economic burden should not be borne by the consumer who had taken the steps available to guard against access to such purchases.

(3) Section 308.2(e)—Customer. The definition of ''customer'' remains largely unchanged. Depending upon the context, the term refers to either the person who made the call or the person who received the bill for a telephone-billed purchase, or both. The only proposed substantive change is that an unnecessarily limiting phrase at the end of the definition was deleted. The Commission intends for this definition to cover any recipient of a bill for a telephone-billed purchase, regardless of whether he or she is the subscriber.

(4) Section 308.2(f)—Pay-per-call purchase. The Commission has added a definition of ''pay-per-call purchase'' to fill the need for a term that succinctly refers to both an attempt to purchase a pay-per-call service as well as an actual purchase of such services.

(5) Section 308.2(g)—Pay-per-call service—Background. Virtually all interested parties—industry as well as consumer advocates and law enforcement—overwhelmingly support extending the definition of ''pay-per-call service'' to cover audio information and entertainment services that are accessed and delivered through dialing patterns other than 900, but in other respects are similar to 900-number services and subject to the same abuses.[75] Indeed, the majority of complaints now relate to toll-free numbers, international numbers, or other dialing patterns that do not use the 900-number prefix.[76] In general, the problems associated with these non-900 audiotext services are the same types of problems that Title II of TDDRA was designed to prohibit—misrepresentations about the underlying service to be provided and inadequate cost disclosures.[77]

The influx of complaints in recent years concerning international audiotext services drew particular attention from commenters, many of whom asserted that it is essential for international audiotext services to be subject to the same rules as 900-number services in order to ''level the playing field'' among competitors and protect all consumers who utilize such services.[78] In fact, several commenters suggested that all audiotext services should be restricted to the 900-number dialing pattern to ensure adequate protection to consumers.[79] The two commenters representing the international audiotext industry were the only commenters who opposed the extension of the definition of ''pay-per-call services'' to include international dialing patterns.[80]

Characteristics of services that should be covered by the Rule. The Commission believes that there are two fundamental distinguishing characteristics of all audiotext services: (1) the instantaneous nature of the transaction; and (2) the eventual receipt of remuneration by the provider of the audio information or entertainment. The instantaneous creation of a financial obligation—the result of the instant capture of ANI by the provider—not only enhances the convenience for the seller and buyer, it also creates fertile ground for deception.[81] Title II of TDDRA, and the provisions of the original Rule that implemented it, were designed specifically to remedy this potential for misrepresentation.

Based on the record in this proceeding, and based on the Commission's enforcement experience, the Commission believes that, in any circumstance where a provider solicits consumers to call a telephone number to receive information or entertainment, and where that provider will receive a per-call or per-minute payment as a result of those calls, the service is susceptible to the same types of unfair and deceptive practices that are prohibited by Title II of TDDRA.[82] The record does not suggest any justification for treating non-900 audiotext services any differently from 900 audiotext services.[83] In both circumstances, the two key factors which create the incentive and susceptibility for fraud are both present: instantaneous purchase by virtue of placement of a telephone call, and receipt of remuneration from the call revenue to the provider of the audio information or entertainment.

Proposed definition of ''pay-per-call services.'' Pursuant to the authority granted to the Commission under Section 701(b) of the 1996 Act, the Commission proposes to extend the definition of ''pay-per-call services'' to cover all purchases of telephone-based audio information or audio entertainment services. The new definition is set forth in Section 308.2(g) of the proposed Rule.

Section 308.2(g)(1) sets forth the statutory definition of ''pay-per-call services.'' Sections 308.2(g)(2)–(3) augment this definition while retaining the substance of 47 U.S.C. 228(i)(1)(A) and 228(i)(2), pursuant to the Commission's mandate under Section 701 of the 1996 Act. The proposed definition is designed to bring within its reach any audio information or entertainment service, accessed by dialing any telephone number or receipt of any telephone call, where all or a portion of the charge paid by the consumer ''results in payment, either directly or indirectly, to the person who

[74] For example, a caller can ''dial around'' a 900-number block that has been placed on the line by the line subscriber's carrier simply by dialing another carrier's ''10–XXX'' access code, then dialing a 900 number.

[75] AARP at 3; ALLIANCE at 4–6; AT&T at 24; CINCINNATI at 1; CU at 1; FLORIDA at 2; NCL at 3; GORDON at 1, 3; ISA at 26–27; SNET at 4–6; SW at 2, 4–5; TSIA at 20–21; Tr. at 17–19, 21–24, 38–40, 418, 458.

[76] ALLIANCE at 2–3; CINCINNATI at 1; FLORIDA at 4; NAAG at 1; NCL at 2; SW at 2; SNET at 3–4. NCL states that, in 1996, it received three times as many complaints about 800 numbers as it did about 900 numbers. (NCL at 2).

[77] See, e.g., *FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998); *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed April 22, 1998); *FTC.* v. *Audiotex Connection, Inc.*, No. 97–0726 (E.D.N.Y., filed Feb. 13, 1997); and *FTC.* v. *Daniel B. Lubell*, No. 3–96–CV–8200 (S.D. Iowa, filed Dec. 17, 1996).

[78] *See, e.g.*, GORDON at 3; ISA at 26–27; CINCINNATI at 1; SNET at 3; Tr. at 17–19, 458.

[79] SNET at 2; SW at 2; AT&T at 29–30; Tr. at 344, 369.

[80] ATN generally; ITA at 3–9.

[81] Congress recognized that the instantaneous nature of the purchase of pay-per-call services is what made the consumer protections under Title II of TDDRA so important. Congress noted that ''[b]ecause the consumer most often incurs a financial obligation as soon as the pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse.'' 15 U.S.C. 5701(b)(6).

[82] *See, e.g., FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998); *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed Apr. 22, 1998); and *FTC* v. *Daniel B. Lubell*, No. 3–96–CV–8200 (S.D. Iowa, filed Dec. 17, 1996). See also, ALLIANCE at 2, 4; AARP at 2–3; AT&T at 6; CINCINNATI at 1; CU at 1; FLORIDA at 1, 5; GORDON at 2; ISA at 4, 26–27; NAAG at 9–10; NCL at 3; SNET at 4; SW at 2; TSIA at 20–21.

[83] In fact, the record indicates that the danger of unfair and deceptive practices may be greater in non-900 audiotext because consumers are not able to effectively block access to these services. See, e.g., International Telemedia Associates and Interactive Audiotext Services. See also, ALLIANCE at 2–4; NAAG at 2.

provides or purports to provide such information or entertainment service.''[84] This proposed change in the Rule brings international audiotext services squarely within the definition of ''pay-per-call services.''

Both the written comments and the workshop discussion strongly supported using remuneration to an information or entertainment provider as the distinguishing characteristic of pay-per-call services.[85] Several commenters, however, were opposed to the strict use of a remuneration standard to the extent that it would encompass some services where the remuneration was disguised within the charge paid by the consumer for the transmission of the call (*e.g.*, 10–XXX audiotext,[86] international audiotext).[87] One commenter supported expansion of the definition of pay-per-call services to cover ''all international audiotext transactions''[88] but strongly opposed the extension of the definition of pay-per-call services to cover audiotext services where the consumer merely pays a domestic toll charge that is similar in price to a ''content neutral'' (non-audiotext) call.[89] Another commenter went further, opposing coverage of any audiotext services where the payment to the provider is contained within the toll-charge. The commenter characterized those services where the remuneration takes the form of a toll charge as ''free to consumers'' because the consumers pay ''no more than the normal toll charge.''[90]

The fact that an international audiotext or 10–XXX audiotext call may cost the same as an ordinary, non-audiotext, ''content neutral'' toll call is not determinative on the issue of susceptibility to the unfair and deceptive practices prohibited by the Commission's Rule.[91] Content neutral calls (*i.e.*, regular toll calls) might cost the same amount as certain audiotext calls, but the fact that there is no remuneration to the call recipient in the case of a content neutral call is an important distinction. Because the recipient of a content neutral call lacks the economic incentive to induce consumers to call as often as possible and stay on the line as long as possible, content neutral calls are not susceptible to the types of unfair and deceptive practices that are prohibited by the original Rule. It is the presence of this economic incentive in audiotext services that gives rise to the susceptibility to unfair and deceptive practices.[92]

Circumstances where there will be a rebuttable presumption of remuneration to a provider. Although remuneration to the service provider is the hallmark of any pay-per-call service, the actual details evidencing certain remuneration agreements are not likely to be immediately available to federal and State law enforcement authorities. For example, information about contractual arrangements between a vendor and a foreign telephone company may not be readily available. Nonetheless, enforcement experience of the FTC and State attorneys general has shown that there are certain circumstances that generally indicate that a revenue-sharing agreement exists.[93] Thus, any of these circumstances will give rise to a rebuttable presumption that payment to a provider of audio information or entertainment services as described under 308.2(g)(2) has been made:

(a) Where persons are solicited to call an international telephone number in order to receive audio information or entertainment that is not specifically related to or dependent on the country where the call supposedly terminates;[94]

(b) Where there is a sudden and unusual increase in the number of long-distance calls to a particular telephone number, or where the number of calls to an information or entertainment number is unusually high;[95]

(c) Where persons are solicited to call one or more specific telephone numbers via a specific common carrier in order to receive audio information or entertainment services;[96] and

(d) Where a provider of audio information or audio entertainment utilizes advertisements that emit electronic signals, including data transmission of computer programs or computer instructions, that can automatically dial a telephone number which will result in charges to a subscriber.[97]

The fact that any one of these circumstances is present will not be determinative of whether remuneration to a provider actually exists. It merely gives rise to a presumption of remuneration that can be rebutted with credible evidence that, in fact, there has been no payment to the provider.

Scope of definition. The proposed definition of ''pay-per-call services'' covers ''audio information and audio entertainment [services], including simultaneous voice conversation services.''

This phrase includes live as well as pre-recorded information or entertainment programs, in addition to so-called ''group access bridged'' services where a provider connects two or more callers to discuss a certain topic.[98] In other words, this definition will include all services where a person provides or purports to provide the audio content of a call, and where that provider receives payment on the basis of calls placed to access that content.

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[84] There are four exemptions which are discussed infra: (1) services resulting in de minimis remuneration to the provider; (2) services delivered pursuant to a valid presubscription agreement; (3) services utilizing telecommunications for the deaf; (4) and tariffed directory services provided by a common carrier or its affiliate.

[85] *See, e.g.*, ALLIANCE at 5; NAAG at 9–10; AT&T at 8, 25–28; Tr. at 331.

[86] Another alternative to the 900-number dialing pattern is audiotext accessed through a particular common carrier's ''10–XXX'' access code (such as ''10–321''). Under this scenario, callers reach the audiotext service by dialing the 10–XXX number followed by a long-distance telephone number. The resulting toll charge to the consumer thus includes a hidden charge for the audiotext service itself, because the carrier and the vendor share the call revenue. The FCC effectively put an end to this practice through a pronouncement in an advisory opinion letter, which stated that common carriers that engage in such practices are ''not providing common carrier services in a just and reasonable manner as required by Section 201(b) of the [Communications] Act and the spirit of [Title I of TDDRA].'' See letter dated September 1, 1995, to Ronald J. Marlowe of Cohen, Berke, Bernstein, Brodie, Kondell & Laszlo, from John B. Muleta, Chief, Enforcement Division, Common Carrier Bureau, Federal Communications Commission. These 10–XXX access codes are currently being converted to ''101–XXX'' numbers.

[87] DMA generally and at 4; ISA at 28; Tr. at 309–310.

[88] ISA at 26–27.

[89] ISA at 28.

[90] DMA at 2–3. The Commission finds the characterization of an international audiotext service as ''free'' to be misleading. This issue is specifically addressed in *FTC.* v. *Daniel B. Lubell,* No. 3–96–CV–8200 (S.D. Iowa, filed Dec. 17, 1996).

[91] Similarly, the fact that some 900-number audiotext programs may cost the same or less than many international or domestic toll charges does not make these services any less susceptible to the unfair and deceptive practices prohibited by the Commission's Rule.

[92] On the other hand, to the extent that a great portion of the toll charge actually goes towards the genuine cost of transmission of the call, and not to the information or entertainment provider, a call might fit within the exemption proposed by the Commission for *de minimis* payments to a provider, discussed *infra.* Proposed Section 308.3(a)(3)(ii).

[93] *See, e.g.*, Interactive Audiotext Services, Inc., No. 98–3049 CBM (C.D. Calif., filed April 22, 1998); *FTC* v. *Audiotex Connection, Inc.*, No. 97–0726 (E.D.N.Y., filed Feb. 13, 1997); and Daniel B. Lubell.

[94] For example, in Daniel B. Lubell, callers were solicited to call telephone numbers in Guyana and the Dominican Republic in order to enter a sweepstakes to win a free Hawaiian vacation and to receive information about free domestic airline travel.

[95] For example, in Audiotex Connection, AT&T noted an unusual and sudden increase in call volume to several telephone numbers in Moldova.

[96] For example, solicitations for consumers to call specific telephone numbers, along with instructions for a caller to first dial a carrier's 10–XXX (now 101–XXXX) access code.

[97] Audiotex Connection.

[98] For example, if a provider offers callers a list or menu of suggested topics or otherwise represents that callers will be able to listen to or participate in discussions concerning certain topics, such as ''adult'' chat, that service would be covered by the definition. Providers who make no representations regarding the content of a call, and who exercise no control, influence, or interest over the content of the call would not be covered by the definition.

The expanded portion of the proposed definition includes all of the audio information and audio entertainment services included in the statutory definition of ''pay-per-call'' [99] but, pursuant to the Commission's authority under Section 701(b)(1) of the 1996 Act, omits any limitations based on dialing pattern.

The proposed expanded definition includes only those services ''where the action of placing the call, receiving a call, or subsequent dialing, touch-tone entry, or comparable action of the caller'' results in a charge to a customer.[100] This phrase is based on the language contained in the original Rule's definition of ''telephone-billed purchase.'' [101] However, in addition to the language contained in that definition, the Commission has added ''receiving a call'' to the list of actions that would result in a charge to the consumer and thus be included as a ''pay-per-call service.''

The Commission uses the phrase ''receiving a call'' to refer to all instances where a consumer incurs a charge by virtue of receiving a telephone call, including traditional ''collect call'' services, as well as other scenarios whereby the receipt of a call results in a charge. The Commission's experience with callback schemes in response to toll-free calls by consumers demonstrates that these schemes are susceptible to the types of abuses prohibited by the Commission's Rule.[102] The fact that the services are accessed by merely answering a telephone call (rather than placing a call) may make them even more susceptible to unfair and deceptive practices than outgoing calls from consumers because the recipient of the bill has even less ability to avoid charges for such services.[103]

Section 308.2(g)(3)(i)–(iii)—Exemptions. These provisions describe the circumstances under which an audio information or entertainment service will not be considered to be a ''pay-per-call service'' and will thus be exempt from the Rule's requirements, even if it would otherwise meet the criteria contained in proposed Section 308.2(g)(2). Each exemption is discussed below.

Section 308.2(g)(3)(i)—Presubscription agreement. This section will exempt from the Rule's requirements calls made pursuant to valid ''presubscription agreements,'' which are described, *infra*. The Commission's intention is that no exemption will exist unless the presubscription agreement meets all of the elements of the definition of that term, as set forth in proposed § 308.2(j). This includes the requirement that the provider demonstrate that the presubscription agreement has been entered into with the person from whom payment is sought. As discussed, *infra*, the Commission has learned that, in many instances, providers of audiotext services have attempted to collect payment pursuant to a purported presubscription agreement from persons who did not authorize or were not aware of the existence of such an agreement. In order to be valid, a presubscription agreement must meet the criteria set forth in proposed Section 308.2(j).[104] Any agreement not meeting these criteria is not exempt from the Rule and its requirements.

Section 308.2(g)(3)(ii)—*De minimis* payments. This proposed section will allow a vendor of audio information or audio entertainment services to show that a service is not a pay-per-call service by demonstrating that the payment received by the provider does not exceed a specified amount.[105] Many of the commenters and workshop participants supported a rebuttable presumption approach to a definition—whereby a service would be presumed to be ''pay-per-call'' unless the provider could show certain facts mitigating the likelihood of fraud.[106] The Commission proposes such an approach. Providers could rebut the presumption of ''pay-per-call'' by demonstrating that the payment for the information or entertainment is de minimis as defined by Section 308.2(g)(3)(ii).

At some point the amount of shared revenue is not sufficiently large for a service to be susceptible to the unfair or deceptive practices prohibited by Title II of TDDRA. Thus, the proposed Rule sets a specific threshold for such revenue, below which an audiotext service would not be considered pay-per-call, even if it otherwise met the definitional criteria. The comments and discussion at the workshop support this approach.[107] The Commission has proposed that if the provider demonstrates that, on average,[108] the payments to the provider will not exceed $.05 per minute or $.50 per call for the particular service, then the service will not be considered pay-per-call.[109] The Commission seeks comment on the appropriate threshold figure for defining pay-per-call, including any relevant statistics or other numerical support.[110]

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[99] 47 U.S.C. 228(i)(1)(A)(i) and (ii).

[100] ''Comparable action'' includes any scenario where a caller takes action that will result in a billing statement being generated by virtue of ANI. *See, e.g., FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998) and Interactive Audiotext Services, Inc., No. 98–3049 CBM (C.D. Calif., filed April 22, 1998). It also includes, but is not limited to, any action that a consumer might take while on the Internet or online that may cause his or her computer modem to dial a telephone number that results in a charge. *See* Audiotex Connection.

[101] Section 308.7(a)(6) of the original Rule uses the term ''telephone-billed purchase'' to describe transactions to which the billing and collection provisions of the Rule apply.

[102] In fact, the Commission's Rule explicitly prohibits collect callback schemes that result from calls to toll-free numbers. *See, e.g.*, International Telemedia Associates.

[103] Although audiotext services delivered by incoming calls to consumers are covered by the proposed definition of pay-per-call services, this does not mean that such services would be permissible under the proposed Rule. On the contrary, billing for such services would almost certainly violate proposed Section 308.17.

[104] Among other things, this means that the agreement must be entered into with the person to be charged for the service.

[105] The Commission intends that the demonstration specified by this section need only be made upon a prior request by the Commission or its staff, or by any other government agency with the authority to enforce this Rule, or as a defense to an enforcement action under this Rule.

[106] Alliance at 5; ISA at 28; AT&T at 8, 25–28; Tr. at 329, 331, 335.

[107] Tr. at 335–36. The AT&T supplemental comment argued against a threshold that was triggered by a certain percentage of the payment going to the vendor. AT&T–2 at 2–4. However, the AT&T supplemental comment did not address the possibility of a threshold triggered by a specific per-minute amount as proposed by the Commission. Indeed, many of the arguments made by AT&T in opposition to a percentage threshold seem to provide support for a nominal per-minute threshold.

[108] The average will be calculated for each different audiotext service offered by the provider. In the case of a ''loss leader,'' where call volumes are inflated with low charges for some consumers to bring down the average to allow others to be charged higher rates, the Commission will consider services that charge different rates (*e.g.*, one high-priced and the other low-priced) to be separate services.

[109] The provider would only be required to demonstrate that the remuneration it receives fell below either the $0.50 per-call *de minimis* threshold or the $0.05 per-minute *de minimis* threshold. The Commission has selected these two figures based on its enforcement experience and on widely available data provided by service bureaus for international audiotext services. The appropriate threshold is one below which there is little incentive for vendors to solicit calls for the sale of audio information or entertainment. Certain arrangements, such as those described by AT&T in its comments (''TSAAs'') may not be subject to unfair or deceptive practices because the payments involved may fall below the threshold. Although the record does not contain details relating to the level of remuneration involved in TSAAs, AT&T's statements at the workshop would seem to indicate that a $0.05 *de minimis* threshold would exempt these agreements. Tr. at 355. As explained in note 110, *infra*, the Commission does not agree with the view of some commenters who urged that exemptions should be granted for specific categories or types of revenue sharing arrangements, such as an exemption for all TSAAs. *See, e.g.*, AT&T at 8, 25–30.

[110] The Commission wants to ensure that its *de minimis* provision exempts only those information or entertainment services that are not susceptible to

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Other exemptions. Section 308.2(g)(3)(iii) exempts calls utilizing telecommunications services for the deaf, and tariffed directory services provided by a common carrier or its affiliate. This exemption tracks analogous language in the statutory definition of ''pay-per-call services'' found in Title I of TDDRA.[111] The proposed Rule adds the word ''tariffed'' to clarify the meaning of the exemption, and to prevent unscrupulous vendors from seeking to abuse the exemption.

Relationship to FCC regulations. Section 308.2(g)(4) states that this section shall not be construed to permit any conduct or practice otherwise precluded or limited by regulations of the Federal Communications Commission. For example, if the FCC were to adopt regulations prohibiting the use of a specific dialing pattern for pay-per-call services, the FTC's ''pay-per-call service'' definition cannot be used as a basis to argue that the FTC has permitted such a practice. The Commission believes it is important to make it clear that a service is not necessarily legal or permissible for purposes of FCC regulation of pay-per-call services simply because it falls within the FTC's proposed definition of ''pay-per-call.''

(6) Section 308.2(h)—Person. The definition has been modified to add ''unincorporated association'' and ''group'' to the list of entities that are considered to be a ''person'' for purposes of the proposed Rule. The Commission adds these two terms based on enforcement experience[112] and the desire for consistency among its rules regulating telephone-related transactions.[113]

(7) Section 308.2(i)—Personal identification number. Section 308.2(i) provides a definition of ''personal identification number'' (''PIN''), a term used in the definition of presubscription agreement. The original Rule's definition of presubscription agreement used a similar term, ''identification number,'' but did not define that term or specify the manner in which it should be issued.

Background. Use of a presubscription agreement allows a vendor to avoid the Rule's requirements by entering into a contractual agreement with a consumer for providing, and receiving payment for, goods or services in a manner that, absent the agreement, would otherwise be covered by the Rule. This means that if a provider has a valid presubscription agreement with a consumer, the provider may provide services to that consumer in a manner that would otherwise violate the Rule (*e.g.*, the provider may charge a consumer for audiotext services accessed via a toll-free number). Where a consumer has entered a presubscription agreement, a PIN provides a means by which the consumer can control access to the service to which he or she has presubscribed. Thus, the original Rule establishes that one of the prerequisites of a PIN is that it prevent unauthorized access to the service by nonsubscribers.[114]

Nonetheless, some service providers have utilized PINs that do not prevent such unauthorized access. For example, some service providers have issued PINs over the telephone upon request, without taking sufficient steps to ensure that the party who has requested the PIN is also the person who will be billed for the presubscribed charges.[115] Other providers have assigned a consumer's checking account number as a PIN and then debited that checking account for services purchased by any caller who presented that PIN number.[116] Such billing methods do not prevent unauthorized access where insufficient steps are taken to ensure that the person paying by this method is actually authorized to debit that account. Purported presubscription agreements that entail these methods of assigning PINs do not satisfy the original Rule's criteria for a presubscription agreement because such PINs are ineffective to ''prevent unauthorized access by nonsubscribers.''

Proposed definition of ''personal identification number.'' The proposed definition will furnish additional guidance to providers on what methods of assigning a PIN satisfy the Rule's requirements. The revised Rule specifies that the PIN must be ''unique to the individual.'' This means that the PIN must be assigned to the person who will be billed for the offered goods or services, not to a telephone number or account. PIN assignments on the basis of ANI do not satisfy the original Rule's requirement that a PIN prevent ''unauthorized access to the service by nonsubscribers,''[117] and would continue to be inadequate under the proposed Rule because they are not unique to the individual. The requirement that a PIN be unique to the individual also means that a provider cannot issue the same PIN to more than one person. Moreover, a PIN cannot be based on a number that is likely to be known to other persons, such as the telephone number from which the call is placed, a person's checking account number, credit card number, or social security number. Since the purpose of a PIN is to limit access to the service to those persons who have entered into a presubscription agreement, allowing a well-known or published number (such as a telephone number) would do little to control access.

The proposed definition also specifies that the PIN must be valid. Three conditions must be met in order for a PIN to be valid: (1) it must be requested by a consumer;[118] (2) it must be provided to no person other than the person who will be billed for the service;[119] and (3) it must be delivered to the person to be billed for the service simultaneously with a clear and conspicuous[120] written disclosure of all the material terms and conditions associated with the presubscription

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the unfair or deceptive practices covered by the Rule. One example of such a service is a local time or weather information line that is operated by a LEC. Undoubtedly, the LEC derives some minimal revenue for calls to these information lines. However, most callers will pay nothing to access the line. More importantly, the per-call and per-minute revenues derived by the common carrier for such a line are likely to be well below the *de minimis* thresholds. The Commission believes that the *de minimis* exemption is the best way to exempt such services—a categorical exemption for such information lines would be open to abuse by unscrupulous vendors who could use common carrier status to derive significant revenue from information or entertainment lines.

[111] 47 U.S.C. 228(i). The Commission has not been given the authority under § 701(b) of the 1996 Act to extend the definition of pay-per-call services to eliminate these exemptions.

[112] *FTC* v. *Audiotex Connection, Inc.*, No. 97–0726 (E.D.N.Y., filed Feb. 13, 1997) (International audiotext scheme where one defendant did business as ''Electronic Forms Management,'' an unincorporated association).

[113] The definition of ''person'' in the Telemarketing Sales Rule includes all of these entities. 16 CFR 310.2(o).

[114] 16 CFR 308.2(e)(1)(iv).

[115] *See, e.g., U.S.* v. *American TelNet, Inc.*, No. 94–2551 CIV–NESBIT (S.D. Fla., filed Nov. 30, 1994) and *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed Apr. 22, 1998). *See, also,* FLORIDA at 8, A44–A60; NAAG at 11; NCL at 4.

[116] Interactive Audiotext Services.

[117] 16 CFR 308.2(e)(1)(iv).

[118] Thus, unsolicited issuance of PIN numbers will not meet the proposed Rule's requirements for establishing a valid PIN.

[119] A valid PIN will become invalid by later disclosure to the wrong party. Thus, providers must use caution when giving out PINs to persons who claim to have ''lost'' or ''forgotten'' a previously-issued PIN.

[120] The concept of ''clear and conspicuous'' disclosure is well-developed in Commission case law and policy statements. *See, e.g.*, Thompson Medical Co., 104 F.T.C. 648, 797–98 (1984); The Kroger Co., 98 F.T.C. 639, 760 (1981); Statement of Enforcement Policy, ''Clear and Conspicuous Disclosures in Television Advertising,'' Trade Regulation Reporter (CCH) ¶ 7569.09 (Oct. 21, 1970); Statement of Enforcement Policy, ''Requirements Concerning Clear and Conspicuous Disclosures in Foreign Language Advertising and Sales Materials,'' 16 CFR 14.9.

agreement, including the service provider's name and address, a business telephone number that the consumer may use to obtain additional information or register a complaint, and the rates for the service. Although the proposed Rule does not require that a presubscription agreement be signed, the Commission believes that it is important for the consumer to be provided with a written copy of the terms of the agreement before the service is accessed for the first time. Written disclosures sent along with the PIN ensure that the consumer will receive an ''unavoidable'' disclosure of the material terms and conditions before the service can be accessed and before any charges can accrue.

The Commission does not believe it is necessary to specify the method by which the PIN should be delivered; service providers may use whatever method of delivery is most appropriate. Regardless of the method chosen, however, the service provider will be responsible for ensuring that the PIN is not distributed to anyone other than the person who will be billed for services under the presubscription agreement.

(8) Section 308.2(j)—Presubscription agreement—Background. The purpose of the presubscription agreement is to allow the seller and consumer to mutually agree to remove themselves from the TDDRA regulatory framework. The definition of this term generated substantial discussion both in the written comments and during the workshop. One significant issue was whether such agreements should be in writing and signed by the consumer. The audiotext industry generally opposed a writing requirement because it would inhibit the ''instantaneous'' nature of audiotext services offered through 800 numbers.[121] Other parties countered industry's arguments by asserting that the proper vehicle for offering instantaneous information or entertainment has been, and continues to be, through the 900-number dialing pattern.[122] These commenters believe that any vendor wishing to sell such goods or services through 800 numbers must take particular care to ensure that the consumer understands the material terms under which the service is offered, including that the consumer will be charged for the goods or services, and how much he or she will pay. One commenter specifically recommended that the Rule require these disclosures to be provided before the consumer incurs charges, even if that means that the purchase is not instantaneous.[123]

Many commenters favored a writing requirement because of the numerous complaints from consumers who have been charged for calls to 800 numbers in situations where they did not authorize such charges or where the goods or services had been represented to be free.[124] Several commenters were troubled by presubscription agreements that were formed orally during the course of a telephone call in which the consumer is issued an ''instant'' calling card or is asked to provide bank account information.[125] As a result, they urged the Commission to ban oral transmission of presubscription agreements and to require that presubscription agreements be in writing.[126] Many of the same commenters believed that a written agreement was particularly important in situations where charges would be recurring.[127] NCL noted that many of the complaints received by its National Fraud Information Center (''NFIC'') were from consumers who thought that certain 800-number calls were free but found out that they had been charged for the calls and/or inadvertently signed up for services, such as club memberships or voice mail, to which they had not expressly agreed.[128] Two common carriers agreed that a presubscription agreement must be in writing.[129]

The industry representatives as a whole generally opposed a requirement that the agreement be signed, based on the argument that the signature of an individual neither demonstrates legal competence nor that the proper person is being billed for the service.[130] One industry member argued that requiring an executed agreement might prevent contemporaneous purchase of merchandise.[131] Industry members also pointed out the difficulties in requiring an agreement to be signed and sent back, and that the failure of someone to sign and return an agreement would not necessarily indicate a lack of desire to use the service.[132]

A presubscription agreement must meet general principles of contract law.[133] Nonetheless, the Commission is aware of numerous examples of purported ''agreements'' created during calls to 800 numbers that do not adhere to these basic principles of contract law—e.g., agreements entered into with minors, or agreements where the party to be billed for the service is not the party who placed the call and supposedly entered into the agreement.[134] Often, these purported ''agreements'' involve the use of ANI to identify a billing name and address and to send a bill, a practice that frequently results in one consumer receiving a bill for a service ordered by another.[135]

Proposed definition of ''presubscription agreement.'' Because the presubscription exception to Rule coverage circumvents the TDDRA protections, the Commission believes the exception should be carefully delineated and not be a source of abusive and deceptive practices. The proposed Rule modifies original Section 308.2(e)(1) to make it clear that the disclosures must be provided to, and the agreement must be reached with, the consumer who will be billed for the service. In addition, the proposed Rule

[121] PILGRIM at 19, 21–22; Tr. at 487–90.

[122] Tr. at 79, 493, 495.

[123] SW at 5.

[124] FLORIDA at 8; NCL at 4–5; NAAG at 11; Tr. at 169, 193–94, 472–74.

[125] NCL at 5; FLORIDA at 8; NAAG at 11.

[126] NCL at 5; FLORIDA at 8; NAAG at 11; SW at 2, 5–6; Tr. at 18. NAAG suggested that electronic transmission of the agreement would also be sufficient to inform the consumer of the costs and terms and conditions of the service. (NAAG at 11). SW suggested that if electronic transmission is allowed, there should be a 10-day lag before the vendor could bill for the service, during which time the vendor should send a written confirmation of the agreement. (SW at 2, 5–6).

[127] NCL at 5; FLORIDA at 8; NAAG at 11; TSIA at 16–17.

[128] NCL at 4. (In 1996, the NFIC received 85 complaints against one Texas-based company regarding unauthorized charges for voice mail service after consumers had called an 800-number for a ''free'' psychic reading.)

[129] AT&T at 10; SW at 2, 5–6; Tr. at 488.

[130] PILGRIM at 19, 21–22; Tr. at 487–90.

[131] PILGRIM at 19, 21–22; Tr. at 487–90.

[132] Tr. at 487–88.

[133] Complying with the 900-Number Rule: A Business Guide Produced by the Federal Trade Commission (Nov. 1993) at 3.

[134] See, e.g., *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed Apr. 22, 1998) and *FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998). Indeed, the Commission's first action to enforce the 900-Number Rule challenged invalid presubscription agreements. *U.S.* v. *American TelNet, Inc.*, No. 94–2551 CIV-NESBIT (S.D. Fla., filed Nov. 30, 1994).

[135] The Commission's view that ANI is insufficient to identify the party to a presubscription agreement is shared by FCC staff, as evidenced by a 1994 letter from FCC staff, relating to the issue of billing for audiotext services offered through 800 numbers. The FCC letter stated that a legitimate presubscription agreement is not created if the vendor immediately issues a personal identification number without determining that the caller is both the subscriber to the line and legally capable of entering into a contractual agreement. ''The basic terms of the presubscription definition preclude reliance on ANI either to create or provide evidence of a valid presubscription or comparable arrangement, because ANI identifies only the originating line and not the caller who seeks to establish an arrangement. Thus billing systems based solely or primarily on ANI do not ensure that presubscribed information services charges are being properly assessed.'' Letter dated June 15, 1994, to Randal R. Collett, Association of College and University Telecommunications Administrators, from Gregory A. Weiss, Acting Director, Enforcement Division, FCC.

will require that presubscription agreements be delivered, in writing, to the person who will be billed for the service.[136] As explained above, Section 308.2(i) of the proposed Rule requires that the provider of presubscription services deliver (to the person who will be billed for the service) a PIN, together with a written disclosure of all the material terms and conditions of the agreement. In every instance, an actual contractual agreement with the person to be billed for the service must be reached in advance of the provision of service and the person to be billed for the service must have received clear and conspicuous disclosure of the material terms of the contract.

The Commission has decided not to propose a requirement, advanced by some commenters, that the written agreement be signed by the consumer. Instead, the proposal would make it clear that the provider who engages in a transaction pursuant to a presubscription agreement has the burden to show that it obtained the actual authorization of the person who was billed for the service. The presubscription agreement is never valid (*i.e.,* it does not meet the conditions of the current Rule or the proposed Rule) unless the agreement is reached with the person who will be billed for the service.

In addition to the changes to the presubscription provisions discussed above, the proposed Rule makes two other minor modifications to the original Rule's treatment of presubscription agreements. First, to simplify the language of the proposed Rule, the phrase ''presubscription agreement'' has been substituted for the phrase ''presubscription or comparable arrangement.''

Second, the proposed Rule adds language in Section 308.2(j)(1) to clarify that a presubscription agreement is an agreement to purchase goods or services, including audio information or audio entertainment services.

Section 308.2(j)(2)—Billing by credit card. In promulgating the original Rule, the Commission stated that it did not appear that Congress intended to include credit card or charge card transactions within the regulatory framework of TDDRA. Therefore, in Section 308.2(e)(2) of the original Rule, the Commission included within the definition of ''presubscription agreement'' those credit and charge card transactions that were subject to the dispute resolution requirements of the Truth in Lending Act (''TILA'') and Fair Credit Billing Act (''FCBA'').[137]

In the current proceeding, some industry members urged the Commission to expand the types of billing methods that would be permitted to constitute a presubscription agreement.

Specifically, one industry association advanced the argument that both pre-authorized drafts [138] and a direct billing option would provide consumers with all of the material disclosures required by the Rule while giving vendors more flexibility in the methods by which they could bill consumers.[139] Other commenters expressed concern with respect to direct billing, noting that there was no substantive difference between 800-number billing through a LEC and 800-number billing through direct billing by a third party. In other words, they believed that to allow these billing options under Section 308.2(e)(2) of the original Rule would effectively allow a person to be charged for a call to a toll-free number—a practice prohibited by TDDRA.[140] These commenters expressed the belief that, if a vendor is charging for audiotext services offered through an 800 number, there should be an actual agreement, regardless of the billing method.[141] Furthermore, some commenters pointed out that they have received complaints from consumers who were billed directly for services after they called an 800-number, but who had not understood that there would be a charge.[142]

The Commission has carefully considered all of the comments and discussion regarding presubscription agreements, and has decided to retain in the proposed Rule the ''credit and charge card'' presubscription option in its current form, with only minor technical changes. The Commission also has determined not to include within this option other types of cards, such as debit, prepaid, or calling cards, which are not subject to both TILA and FCBA.

Presubscription agreements based on a credit or a charge card are permitted because these transactions are already subject to the legal protections of TILA and FCBA, including the right to dispute unauthorized charges. In the absence of the protections afforded by these Acts, however, it is essential that the consumer who will be billed for a service agree, in advance, to pay for the service after receiving clear and conspicuous disclosure of all the material terms of the agreement. Title III of TDDRA directed the Commission to promulgate rules with requirements ''substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts.'' [143] To allow a calling card, a debit card, or other means not within the ambit of both TILA and FCBA to substitute for an actual agreement with the person to be billed for the service would undermine the entire purpose of the presubscription agreement exception to the Rule. It would also undermine the Commission's mandate to promulgate TDDRA rules substantially similar to TILA and FCBA.

Allowing such types of payment methods to substitute for an actual agreement with the person to be billed for a service would also encourage the use of so-called ''instant'' calling cards. Such cards are often issued without any assurance that the caller obtaining the card is authorized to arrange for a purchase to be billed to the telephone number from which the call is being placed. Under the proposed Rule, cards not subject to TILA and FCBA do not constitute presubscription agreements unless they meet the requirements of Section 308.2(j)(1).

For the reasons discussed above, Section 308.2(j)(2) of the proposed Rule retains the language of the original Rule, with only three revisions that are dictated by the Commission's decision to expand coverage of the Rule beyond the ''pay-per-call services'' offered through the 900-number platform. First, the proposed Rule changes the language relating to the disclosure of a credit card number ''during the course of a call to a pay-per-call service,'' to read ''during the course of a call to purchase goods or services, including audio information or audio entertainment services.'' This change is designed to clarify that services billed to a credit card are purchases made pursuant to a presubscription agreement and thus are excluded from the definition of ''pay-per-call services.''

Second, the proposed Rule deletes the last sentence of 308.2(e)(2) of the original Rule. This sentence made clear that providers are prohibited from

[136] While this should prohibit the instantaneous sale of audiotext over toll-free numbers, the Commission believes that 900 numbers, not toll-free numbers, should be the proper vehicle for offering ''impulse'' purchases of audiotext services. *See* 15 U.S.C. 5711(a)(2)(F).

[137] 58 FR at 42367.

[138] By use of a pre-authorized draft (also known as a ''demand draft'' or a ''phone check'') a seller can obtain funds from a buyer's checking account without that person's signature on a negotiable instrument.

[139] TSIA at 15–16; Tr. at 473–82.

[140] 15 U.S.C. 5711(a)(2)(F). *See also,* Tr. at 480–87.

[141] Tr. at 483, 486–87.

[142] Tr. 483–84.

[143] 15 U.S.C. 5721(a)(2).

charging consumers for calls to presubscribed services unless the consumer either had entered an agreement before that telephone call, or was paying for the service with a credit or charge card. This sentence is no longer necessary because the proposed Rule in Section 308.2(j)(1) prohibits providers from charging consumers until the consumer has received, in writing, a PIN and a clear and conspicuous disclosure of all the material terms of the agreement.

Finally, the proposed Rule clarifies that, in order for the Section 308.2(j)(2) credit card alternative to a 308.2(j)(1) presubscription agreement to be available, the credit card must be ''the sole method used to pay for the charge.'' The Commission is aware that some providers request a credit card number from a consumer, but bill the consumer by some other method—a method that is not subject to the dispute resolution protections of TILA and FCBA.[144] As the text of the original Rule and its Statement of Basis and Purpose make clear, this practice violates the Rule.[145] The Commission proposes adding this clause to remove any possible ground for argument, unpersuasive though it may be, that the Rule could be construed to allow a provider to make use of the presubscription option through the meaningless eliciting of a credit card number without using the card to bill charges.

Relationship to FCC Regulations. Since passage of the 1996 Act, the FCC's regulations enacted under Title I of TDDRA have differed in some respects from the FTC's Rule enacted under Titles II and III of TDDRA. This is because the 1996 Act amended Title I of TDDRA to require the FCC to amend its rules governing the obligations of common carriers with respect to the use of toll-free numbers for audiotext services.[146] These amendments affected what the FCC rules require common carriers to include in any tariff or contract relating to the use of toll-free telephone numbers for audiotext purposes. The proposed revision of the FTC's Rule would not conflict with any FCC requirements for what common carriers must include in their tariffs or contracts, and the two sets of regulations would continue to differ with respect to their approach to audiotext services provided over toll-free numbers.

Prior to the 1996 Act, the FCC's regulations pertaining to toll-free numbers were virtually identical to the requirements imposed in Section 308.5(i) of the FTC's original Rule: the use of a toll-free number to charge for information conveyed during a call was prohibited, unless the charges were the result of a presubscription or comparable arrangement, which included (by definition) a charge to any credit card that was covered by TILA and FCBA. With the 1996 amendments, however, the FCC's regulations now differ from the FTC's Rule by requiring common carriers to prohibit the use of toll-free numbers to charge for information or entertainment unless the consumer has entered into a written agreement. At the same time, the FCC's new rules are more lenient than the FTC's Rule in that, under the FCC's new rules, common carriers can permit vendors and service bureaus using the carrier's networks to charge consumers for calls made to an 800 number in the absence of a presubscription agreement, if the call is charged to, *inter alia*, a debit card, calling card, or prepaid account. Section 701(a) of the 1996 Act is silent as to TILA and FCBA coverage of transactions by these means.

A number of commenters suggested that the Commission amend its original Rule[147] to track the amended FCC regulations.[148] Commenters advanced several arguments in support of such a modification. Several commenters supported tracking the FCC's amended rules so that the Commission's Rule would allow providers other methods to bill for toll-free audiotext services besides obtaining an explicit ''presubscription'' agreement or charging the service to a credit card which is subject to TILA and FCBA.[149] Other commenters favored such a modification because it would reinforce the FCC's requirement that presubscription agreements be in writing.[150] Finally, some commenters argue that amending the FTC Rule to track the FCC's regulations would serve the goal of regulatory consistency; industry would only need to look to one set of rules.[151]

Regulatory consistency is an important goal. This is one of the primary reasons why, in promulgating the original Rule, the FTC chose, at its own discretion, to adopt a provision that paralleled the analogous FCC provisions regulating the use of 800 numbers[152] and defining ''presubscription or comparable arrangement.''[153] However, were the FTC to adopt a definition of ''presubscription agreement'' that tracked the FCC's new definition, or if it were to similarly modify the Rule's provisions governing toll-free numbers, it would not be possible to achieve the explicit purposes of Titles II and III of TDDRA as amended by the 1996 Act.[154]

There is no inherent conflict between the FCC's new regulations and the FTC's original or proposed Rule. The FCC's Title I regulations apply only to common carriers in their role of providing basic dial tone and transport service to service providers that use toll-free numbers, while the FTC's regulations under Title II of TDDRA directly apply to vendors and service bureaus who would be using toll-free numbers to charge a consumer for audio information or entertainment. Furthermore, there is nothing in the FTC's proposed Rule to prevent a vendor from offering to accept payment by means of a card not subject to TILA or FCBA, as long as the vendor reaches

[144] In one case recently filed by the Commission, a provider was allegedly collecting credit card numbers from consumers purportedly to create a valid presubscription service, but instead allegedly billed the consumers directly, based on ANI. *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed Apr. 22, 1998).

[145] 58 FR at 42367. *See* Tr. at 472 (NAAG: ''I think the proper way to construe the law is to say if you're going to acquire pay-per-call services using a credit card, the charge ought to appear on the credit card.'').

[146] On July 11, 1996, the FCC published an Order and Notice of Proposed Rulemaking to amend its Rules in accordance with the amendments to Title I of TDDRA. ''FCC Pay-Per-Call Order and Notice,'' CC Docket Nos. 96–146 and 93–22, and FCC 96–289, 11 FCC Rcd 14738 (1996). The Order portion of this document amended 47 CFR Part 64 (the FCC's pay-per-call rules) in accordance with the mandate of the 1996 Act; the Notice of Proposed Rulemaking portion of the document requested comment on additional proposed changes to the FCC's rules not specifically mandated by the Act.

[147] Specifically, these commenters supported amending Sections 308.2(e) and 308.5(i) of the original Rule—the provisions dealing with presubscription agreements and the use of toll-free numbers for audiotext purposes.

[148] AT&T at 5; ISA at 31–33; NAAG at 11; PMAA at 4, 15; SW at 3, 10; TSIA at 19.

[149] ISA at 32–33; PMAA at 15.

[150] NAAG at 11; AT&T at 10. SW specifically opposed tracking the new FCC regulations with regard to its allowance of an ''electronic'' signature. Such a form of written agreement, the commenter argued, would not provide a method of verifying that the execution was by a competent adult who is the person responsible for paying the telephone bill. SW at 5.

[151] AT&T at 5–6; ISA at 31–33; PMAA at 4, 15; SW at 3, 10; TSIA at 19.

[152] 58 FR at 42387.

[153] *Id.* at 42367.

[154] In fact, the 1996 Act's amendments to TDDRA virtually mandate divergence between the FTC and FCC regulations. Under Title I of TDDRA, the FCC's regulations continue to operate under the statutory definition of ''pay-per-call services'' set forth in 47 U.S.C. 228(i). However, under Title II of TDDRA, as amended by the 1996 Act, the Commission may adopt an alternative definition of ''pay-per-call services.'' Thus, after the 1996 Act, the FCC and FTC Rules are now focused on two different categories of ''pay-per-call services.'' In the current legal framework, an attempt to produce parallel Rules under Titles I, II, and III of TDDRA would be futile.

a presubscription agreement with the person to be billed for the service and complies with the requirements of proposed Section 308.2(j)(1).[155] Thus, it is entirely possible to use any of the billing mechanisms permitted under Title I of TDDRA, as amended, as long as the provider complies with the additional precautions of proposed Rule Section 308.2(j)(1), which are designed to ensure that the party being billed for the toll-free audiotext service is the same person who agreed to be billed for that service.

It is the mandate of the FTC, acting under Title II and III of TDDRA, to prohibit the use of unfair or deceptive practices in the provision of audiotext services.[156] Title I of TDDRA gives the FCC no similar mandate. The FTC must consider the extent to which any proposed new exemption from the Rule (such as the exemption embodied in the revised FCC rules) would be likely to increase the types of unfair and deceptive practices that prompted enactment of the TDDRA. There is evidence on the record suggesting that audiotext services purchased using these billing methods—methods that would be permitted if the FTC Rule tracked the revised FCC rules—are susceptible to the same types of unfair or deceptive practices that are prohibited by the original Rule. To fulfill the mandate of Section 701(b) of the 1996 Act, it is necessary for the FTC's Rule to cover these purchases.[157]

Amending the FTC Rule to parallel the revised FCC rules would also undermine the FTC's mandate under Title III of TDDRA to promulgate rules that impose requirements that are ''substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts.'' [158] The FCC's regulations are not subject to a similar mandate. The Commission believes that it is consistent with the regulatory framework of TDDRA that FCC and FTC regulations differ with respect to the requirement that billing alternatives to presubscription agreements be subject to TILA and FCBA.

(9) Section 308.2(n)—Service bureau—Background. One of the more significant changes in the audiotext marketplace since the promulgation of the original Rule is that service bureaus now play an important role for many vendors in providing access to billing and collection systems. Some service bureaus act as ''billing aggregators''—*i.e.*, they act as intermediaries between vendors and LECs in order to get their client-vendors' charges to appear on telephone bills. Other service bureaus bypass the LEC billing system completely and provide their clients with direct billing services. Still other service bureaus have played an essential role in the growth of international audiotext by entering into revenue-sharing agreements with foreign telephone companies, and then providing vendors of audiotext services with international numbers through which their audiotext services can be accessed.[159]

Proposed definition of ''service bureau.'' The Commission proposes several changes to the definition of ''service bureau'' reflecting the fact that the role of the service bureau has expanded since the original Rule was promulgated. The proposed definition of ''service bureau'' is also more specific than the definition of that term in Section 308.2(i) of the original Rule. The original definition of ''service bureau'' was open-ended—*i.e*, it was defined as a person ''who provides, among other things, access to telephone service and voice storage, to pay-per-call providers.'' [160] By contrast, the proposed definition will define a service bureau as a person who provides one or more of a finite list of services to vendors. This format will provide better guidance to industry and law enforcement in determining which entities are service bureaus and will clarify that billing aggregators and entities providing access to international audiotext payment systems are covered by the definition.

The proposed definition of service bureau is intended to incorporate all of the essential services that a vendor might need in setting up a business selling products or services through telephone-billed purchases. Section 308.2(n)(1) of the proposed Rule identifies the following services: voice storage, voice processing, call processing, billing aggregation, call statistics (call and minute counts), call revenue arrangements (including revenue-sharing arrangements with common carriers), or pre-packaged pay-per-call investment opportunities (*i.e*, ''turn-key programs''). Any person providing one or more of these services to vendors will be covered by the proposed definition of service bureau.

Billing aggregators are explicitly included in the proposed definition of service bureau. As the Commission's enforcement experience has demonstrated, billing aggregators play a key role in providing to vendors—including unscrupulous ones—access to a telephone billing and collection system that permits vendors to cost-effectively bill and collect for their services. In many, if not most cases, they are the entity responsible for submitting the charges to the LECs for placement on consumers' telephone bills. Thus, the Rule's purposes would be thwarted unless billing aggregators were brought explicitly within the ambit of the Rule. Similarly, service bureaus that facilitate revenue-sharing arrangements between vendors and foreign telephone companies in connection with international audiotext are included in the proposed definition. This service bureau activity is essential to vendors seeking to sell audiotext in a manner that circumvents the consumer protections guaranteed by Title III of TDDRA.

In the original Rule, the definition of ''service bureau'' contained an exemption for all common carriers.[161] In its Request for Comment, the Commission asked whether it was still appropriate for the definition to exclude all common carriers, regardless of the activities they perform.[162] Several commenters urged the Commission to reexamine this common carrier exemption, arguing that the service being provided, and not the type of entity that provides the service, should determine whether an entity is subject to the Rule.[163] One commenter argued that the common carrier exemption enabled service bureaus to claim ''common carrier'' status to evade regulation, thereby gaining a competitive advantage.[164] The Commission is persuaded by these arguments. Therefore, under the proposed Rule, any person, including a common carrier, who provides the

[155] In fact, many of the billing options permitted by the FCC's rule (*e.g.*, a calling card) might easily fall within the Commission's proposed definition of PIN.

[156] 15 U.S.C. 5711(a)(1), 5711(a)(4), and 5721(a)(1).

[157] *See, e.g.*, NCL at 3–5; FLORIDA at 8, Attachments A44–A60; NAAG at 11; SW at 2, 5–6; Tr. at 194, 471–84, 498–500.

[158] 15 U.S.C. 5721(a)(2).

[159] Some of these new types of service bureaus have played key roles in the new deceptive and unfair practices that have injured consumers. For example, one service bureau providing international audiotext programs to willing vendors proudly boasts ''no chargebacks'' in its advertisements—underscoring both the potential harm to consumers caused by international audiotext, as well as the essential role service bureaus play in making international audiotext possible.

[160] 16 CFR 308.2(i). [Emphasis added.]

[161] 16 CFR 308.2(i).

[162] 62 F.R. 11753 (Mar. 12, 1997).

[163] NCL at 4; NAAG at 10; TSIA at 19–20.

[164] TSIA at 19–20.

services listed in 308.2(n)(1) to vendors would be considered a service bureau.

Nevertheless, the Commission recognizes that there is one key service bureau function—providing access to telephone service to vendors of pay-per-call services—that cannot be fairly applied to common carriers. This service, which was identified in the original definition of service bureau, is essential to any pay-per-call service. Indeed, it is a key function of those service bureaus who obtain international telephone numbers for vendors who wish to provide international audiotext services. However, a common carrier that merely provides a vendor of pay-per-call services with access to basic telephone service (the essential function of a common carrier) should not be considered a service bureau subject to the Commission's Rule promulgated under Title II and III of TDDRA. Acting as traditional common carriers, these entities are already subject to the regulations of the FCC promulgated under Title I of TDDRA. Therefore, the Commission proposes a limited exemption from the definition of service bureau for common carriers that provide vendors of pay-per-call services with nothing more than access to telephone service. Under proposed Section 308.2(n)(2), any person, other than a common carrier, who provides access to telephone service to vendors of pay-per-call services,[165] would be considered a service bureau.

(10) Section 308.2(q)—Telephone-billed purchase. The term ''telephone-billed purchase'' defines those products and services that are covered by the dispute resolution provisions of the Rule promulgated under Title III of TDDRA. The term is much broader in scope than the term ''pay-per-call services,'' the category of services covered by Title II of TDDRA. The original Rule's definition of ''telephone-billed purchase'' comes from Title III of TDDRA,[166] and it currently includes ''any purchase that is completed solely as a consequence of the completion of the call or subsequent dialing, touch tone entry, or comparable action of the caller.''[167] The term specifically excludes all local exchange or interexchange telephone services, as well as other services excluded by FCC regulation. Thus, any purchase of a product or service (other than telephone toll service) that results in a charge to a consumer or an account identified by reference to ANI is included in the current definition, and any person billed for such a purchase would be entitled to dispute the charges pursuant to the Commission's Rule.[168]

Background. At the time the original Rule was promulgated, 900-number services were the primary, if not the only, familiar example of telephone-billed purchases. Today, the growing use of ANI as a basis for billing consumers has increased the range of available telephone-billed purchases. Consumers can purchase voice mail, Internet access, telephone equipment, roadside assistance club memberships, and other goods and services and have the charges billed to their telephone bill. Concurrent with this development, there has been a sharp increase in complaints about telephone-billed charges for such goods and services.[169] Consumer organizations, as well as federal and State regulatory and law enforcement agencies, have received a large number of complaints from consumers who have found unclear or unexplained monthly recurring charges on their telephone bills for services that were never authorized, ordered, received, or used.[170] These unauthorized charges (i.e., ''cramming'' charges), are often purportedly for club memberships, or subscriptions for psychic, personal, travel, or 900-number services. In other instances, the charges involve services such as personal 800 numbers, voice mail, paging, and calling cards.

The common thread in all of these types of cramming charges is that a consumer is identified, and a billing statement is transmitted, based on a telephone number. In other words, in all of these instances, a telephone number was used in the same manner that a credit card account number might have been used in the past.[171] While consumers have for a long time had numerous rights to dispute unauthorized or other incorrect charges to their credit card numbers,[172] until 1992 they had no comparable rights to dispute charges for products and services billed to a telephone number. Title III of TDDRA was specifically designed to address this problem; Congress instructed the Commission to prescribe rules establishing a dispute resolution procedure for telephone-billed purchases that are ''substantially similar'' to the dispute resolution protections afforded credit card users under TILA and FCBA.[173]

Proposed definition of ''telephone-billed purchase.'' The original Rule definition of ''telephone-billed purchase'' covered all (non-toll) charges resulting from ANI capture. This includes many, but not all, instances of cramming.[174] It does not cover instances of cramming, for example, where a phone call is never made in connection with a charge, yet the charge is billed to the consumer's telephone bill.[175] Proposed Section 308.2(q) expands the definition of telephone-billed purchase to include all purchases that are ''charged to a customer's telephone bill,'' even if the purchase did not involve a telephone call.

Title III of TDDRA was intended to provide telephone-billed purchases the same types of protections afforded to credit card purchases under TILA and FCBA. The telephone number, in telephone-billed purchases, is analogous to the credit card number. To carry the analogy further, instances of ''non-ANI cramming,'' such as a charge resulting from entry of a consumer's telephone number on a sweepstakes entry form, are much like instances where a consumer's credit card number is used in a transaction where the physical card is not itself presented. In the credit card environment (under TILA and FCBA), the fact that a transaction takes place without the presence of the actual card would not affect the cardholder's right

[165] It is important to note that proposed § 308.2(n)(1), unlike § 308.2(n)(2), applies to all vendors, and is not limited to vendors of pay-per-call services.

[166] 15 U.S.C. 5724(1).

[167] Section 308.7(a)(6) of the original Rule.

[168] Services provided pursuant to a presubscription agreement are excluded from the definition. 15 U.S.C. 5724(1)(A), 16 CFR 308.7(a)(6)(i).

[169] SW at 7–8; NCL at 4; Tr. at 382–84, 498–504. For example, NCL reported that most of the complaints received by the NFIC that relate to 800 numbers involve calls that the consumer thought were free, but by making them, the consumer had unknowingly signed up for services which resulted in charges (such as voice mail or club memberships).

[170] Tr. at 498–500.

[171] FCC Public Forum on Local Exchange Carrier Billing for Other Businesses (June 24, 1997). Transcript, pp. 232–237.

[172] 15 U.S.C. 1666.

[173] 15 U.S.C. 5721(a)(2).

[174] As discussed elsewhere in this Notice, the Commission proposes several modifications to the Rule to provide greater protection to consumers who have been ''crammed'' (for example, proposed §§ 308.2(b)(9)–(11)) and to prohibit vendors, service bureaus, and billing entities from engaging in cramming (proposed § 308.17).

[175] In at least one case where unexplained or unauthorized charges did not result from a telephone call, a deceptive prize promotion allegedly was used to market a voice mail service. Allegedly, consumers were enticed to fill out a sweepstakes form for a chance to win a new vehicle or a sum of cash. The form failed to adequately disclose that the vendor interpreted the submission of a completed entry form as authorization to bill charges for a ''membership'' to the telephone number listed on the form. In many instances, consumers allegedly were unaware that they had signed up for this ''membership''; in other instances, consumers allegedly found they were being billed for services because someone else had filled out the form and put down their telephone number. *FTC* v. *Hold Billing Services, Ltd.*, No. SA98CA0629 FB (W.D. Texas, filed July 19, 1998).

to dispute an unauthorized charge. By contrast, in non-ANI cramming, a consumer loses his or her right to dispute the charge simply because the telephone was not actually used in the transaction. In this respect, the Commission's Rule is no longer ''substantially similar'' to the rights afforded by TILA and FCBA.

Congress has given the Commission significant flexibility in prescribing regulations that are ''necessary or appropriate'' to implement the provisions of Title III.[176] The Commission has broad authority to prohibit unfair or deceptive practices that ''evade'' its dispute resolution rules or otherwise ''undermine the rights'' Congress gave to consumers under Title III of TDDRA.[177] Non-ANI cramming is such a practice.

The Commission believes that consumers should have equal rights to dispute unauthorized non-toll charges on their telephone bills regardless of whether or not a telephone was used to generate the charges. Even if consumers carefully monitor the use of the telephone, they cannot keep their telephone number secure and private as they would their credit card number. Indeed, consumers may not be aware of the need to keep their telephone numbers secure. The ability to use a telephone number alone to bill a consumer, in the absence of an actual telephone call, represents a tremendous opportunity for fraud.

The Commission believes that in order to provide consumers with rights that are substantially similar to the dispute resolution rights of TILA and FCBA, and in order to prevent unfair or deceptive practices that evade these rights, it is both necessary and appropriate to propose an amendment to the definition of ''telephone-billed purchase'' to include instances of cramming that do not arise from a telephone call from the consumer's telephone.

Clarification. Proposed Section 308.2(q) also clarifies the definition of ''telephone-billed purchase'' by adding the phrase''pay-per-call purchase.'' While the Commission believes that the current language of the Rule clearly encompasses pay-per-call services, this revision will prevent any misinterpretation of the Rule's coverage. This clarification will ensure that persons billed for pay-per-call services will have the full panoply of protections provided by the dispute resolution provisions of the Rule, regardless of the dialing pattern used to access the service. Proposed Section 308.2(q) also clarifies the definition by using the term ''presubscription agreement'' in place of the term ''preexisting agreement,'' and by specifying that the exemption for presubscription agreements applies only to those purchases where the presubscription agreement satisfies all of the requirements of the proposed Rule.

(11) Section 308.2(r)—Variable option rate basis. The original Rule used the term ''variable rate basis'' to describe situations where the rate charged for a pay-per-call service varied depending on the options chosen by the caller. For example, in the course of a pay-per-call program, a consumer might be asked to press a specific number on a touch tone keypad that would access a different program charged at a higher rate. The term ''variable rate basis,'' however, is no longer specific enough to describe the current situation. This is true because, as discussed infra, there are now pay-per-call services where the charge to the consumer may vary depending on factors other than the options specifically chosen by the consumer—e.g., services where the rates vary depending on the passage of time.[178] To clarify the specific situations that the original phrase ''variable rate basis'' was intended to cover (i.e., those that are dependent on the options selected by the caller), the Commission proposes substituting the phrase ''variable option rate basis.'' Proposed Section 308.2(r) defines this term to refer to the rate structure of pay-per-call services where the rate billed to the consumer depends on the specific options chosen by the caller during the call.

(12) Section 308.2(s)—Variable time rate basis. As noted above, new forms of variable rates have become available since the original Rule was promulgated. For example, it is now possible to bill the first minute at one rate while subsequent minutes are billed at a higher or lower rate.[179] Proposed Section 308.2(s) provides a term, ''variable time rate basis,'' to describe instances where charges vary according to the amount of time the caller is on the telephone or according to other factors not determined by the options chosen by the caller. Section 308.4(a)(1)(iii)(B) of the proposed Rule requires that, in advertisements for pay-per-call services billed on a variable time rate basis, the advertisement shall state the cost of each different portion of the call. This same requirement applies to the free preamble message under proposed Section 308.9(a)(2)(iii)(B). These provisions will ensure that consumers receive accurate disclosure of the full cost of the call before a call is placed or before charges are incurred.

(13) Section 308.2(t)—Vendor. The original Rule uses both the term ''vendor'' and the term ''provider of pay-per-call services.'' Under the original Rule, a ''provider of pay-per-call services'' was a specific type of vendor—a vendor who happened to sell pay-per-call services. The proposed Rule discontinues the use of the term ''provider of pay-per-call services'' because the Commission does not believe there is any value to maintaining a separate term for those vendors who sell pay-per-call services. The proposed Rule therefore uses the term ''vendor'' to refer to both providers of pay-per-call services as well as sellers of other telephone-billed goods or services.

Subpart C—Pay-Per-Call Services

Section 308.3 General Requirements for Advertising Disclosures

Section 308.3 of the original Rule contained the provisions relating to disclosures of cost and other material information in the advertising of pay-per-call services. As discussed earlier, the proposed Rule has broken the former single Section 308.3 (''Advertising of pay-per-call services'') into several shorter sections, each dealing with a discrete subject.

Section 308.3 of the proposed Rule, entitled ''General Requirements for Advertising Disclosures,'' retains the language from Section 308.3(a) of the original Rule. This section sets forth the ''minimum standards'' applicable to disclosures required in advertisements under the Rule.[180] The only proposed modification to this section is the addition of a new requirement relating to any advertising medium not specifically addressed in the Rule.

Internet and online advertisements. In its Request for Comment, the Commission sought information and views on whether the advertising regulations of the original Rule should set forth specific requirements for advertising that appears on the Internet or online. In general, the commenters, both in writing and in the discussion at the workshop, expressed the view that the regulation of Internet and online advertising is an issue best suited for another rulemaking proceeding in which comment can be solicited from a

[176] 15 U.S.C. 5723.

[177] 15 U.S.C. 5721(a)(1). *See also* 15 U.S.C. 5711(a)(2)(J) and (a)(4) (providing similar authority under Title II).

[178] *See, e.g.,* ISA at 22; PMAA at 10–12; TSIA at 17–18.

[179] *Id.*

[180] *See,* discussion in the Statement of Basis and Purpose of the original Rule, 58 FR at 42369.

much broader array of online advertisers.[181] Several participants at the workshop cautioned that this proceeding may not be an appropriate forum for setting such advertising standards,[182] but nevertheless were troubled by the prospect of the Internet becoming the next haven for deceptive pay-per-call advertising. These participants suggested that some type of general standard for advertising might be necessary in order to ensure that this scenario did not occur.[183]

The Commission agrees that standards for Internet or online advertising would best be considered in a proceeding focusing more narrowly on business practices in the newer types of electronic commerce. In fact, the Commission has begun this process by requesting comment on the applicability of many of its rules and guides to electronic media.[184]

Nonetheless, the Commission shares the concerns of those who fear that, absent some specific provision in this Rule, unscrupulous vendors might use the Internet to sell pay-per-call services without providing consumers with the cost disclosures that are required of pay-per-call vendors using the traditional print and broadcast media specifically addressed in the original Rule. Accordingly, Section 308.3(g) of the proposed Rule requires that, in any advertising medium not specifically addressed elsewhere in the Rule, the required advertising disclosures must be clear and conspicuous and made in a manner in which they cannot be avoided by consumers acting reasonably. A vendor must ensure that in any Internet or online advertisement, a consumer will not receive the information required to make the purchase (*i.e.*, the telephone number of the pay-per-call service), unless a consumer also receives the required disclosures, displayed clearly and conspicuously. This will usually mean that the disclosures must appear adjacent to the disclosure of the telephone number itself, and that the consumer must not be required to ''click through'' or ''scroll down'' to see the disclosures. This proposed change is consistent with the proposal contained in the Commission's Request for Comment regarding the applicability of its rules and guides to electronic media, referred to above.[185]

Section 308.4 Advertising Disclosures

Proposed Section 308.4 incorporates the provisions set out the following sections of the original Rule: 308.3(b) (Cost of the call); 308.3(c) (Sweepstakes; games of chance); 308.3(d) (Federal programs); and 308.3(f) (Advertising to individuals under the age of 18). Each of these provisions deal with specific, substantive disclosure and advertising requirements. The Commission has decided to group these requirements together in their own separate section in order to give them more prominence.[186]

In addition to placing these requirements together in a separate section, the proposed Rule clarifies the term ''variable rate basis'' that was used in Section 308.3(b)(1)(iii) of the original Rule. As discussed, the Commission originally intended this term to cover situations where the rate charged would vary depending on the options chosen by the caller. However, technological advances since the original Rule was promulgated now allow other forms of variable rates, such as billing the first minute at one rate and billing subsequent minutes at a lower or higher rate.[187] Thus, Section 308.4(a)(1)(iii)(A) now uses the term ''variable option rate basis'' (emphasis added) in order to denote the type of cost disclosure to be made when the cost of the call varies depending on the options chosen by the caller.

The Commission believes that consumers should know, in advance of placing a call, that the rates may vary as time passes. Consumers must be given sufficient information to make judgments about how much time they wish to spend listening to a pay-per-call service and how much money they want to spend for it. Accordingly, the Commission proposes a new provision [308.4(a)(1)(iii)(B)] to specify the cost disclosures to be made in instances where charges vary according to the amount of time the caller is on the telephone or to other factors unrelated to options chosen by the caller. The Commission intends for these situations to be encompassed by the term ''variable time rate basis'' (emphasis added).

Section 308.6 Misrepresentation of Cost Prohibited

Proposed Section 308.6(a) is a new provision that specifies that a deceptive practice for a vendor to misrepresent the cost of a pay-per-call service. In many respects, this deceptive practice is already prohibited by the original Rule: the original Rule requires cost disclosures[188] and prohibits the vendor from making representations in advertising that are ''contrary to, inconsistent with, or in mitigation of'' the cost and other required disclosures.[189] Nevertheless, the Commission believes that the importance of the disclosure of cost warrants a separate provision explicitly prohibiting this type of misrepresentation. Importantly, unlike existing Rule provisions, proposed Section 308.6(a) will not only address misrepresentations of cost that appear in advertising, but it will also address misrepresentations that occur during the pay-per-call transaction itself. For example, proposed Section 308.6 will address situations where the recorded or live audiotext program misleads a caller into staying on the line by misrepresenting that charges on the pay-per-call service have stopped.

The Commission continues to believe, as it did when the original Rule was published, that callers should be left with no doubt as to when they must hang up to avoid being charged for the call.[190] The original Rule requires a signal or tone at the end of the free preamble[191] or after any free time following the preamble.[192] Proposed Section 308.6(b) makes clear that if any portion of a telephone call is free,

[181] PMAA at 14; ISA at 28–31; AT&T at 11–12, 32; USWEST at 2; Tr. at 560–75. One commenter suggested that the Commission specify reasonable requirements for clear and conspicuous disclosures for pay-per-call services advertised on the Internet or online. (NCL at 5).

[182] In general, commenters argued that since online advertisements are still in their infancy, any comprehensive treatment of the topic in this forum might have an undesired impact on the entire online industry.

[183] Tr. at 569–74.

[184] 63 FR 24996 (May 6, 1998).

[185] 63 FR at 25002–04.

[186] Original Section 308.3(e) (Prohibition on advertising to children) appeared adjacent to these provisions in the original Rule. However, this Section is not a substantive disclosure requirement for pay-per-call advertisements. Instead, it implements TDDRA's mandate to prohibit most pay-per-call advertisements to children under 12 (15 U.S.C. 5711(a)(2)(C)). This provision has been incorporated in the proposed Rule in Section 308.5 (Advertising to children prohibited).

[187] *See, e.g.*, ISA at 22; PMAA at 10–12; TSIA at 17–18.

[188] 16 CFR 308.3(b).

[189] 16 CFR 308.3(a)(5).

[190] This is especially important, given that the advertisements of some providers obscure the amount of ''free'' time a consumer will receive. For instance, Commission staff has observed some deceptive advertisements promising ''10 free minutes,'' when in reality the caller will not receive all of these free minutes in one call—the caller might receive only two free minutes in five different calls to the service. A caller who failed to read the fine print may believe it is safe to stay on the telephone line for ten minutes before charges accrued. The requirement of a signal or tone clearly indicating the end of the free time will be an important tool in curbing the harm to consumers from this type of advertising.

[191] 16 CFR 308.5(a)(3) and (b).

[192] *See* December 18, 1996, opinion letter from Eileen Harrington, Associate Director, Division of Marketing Practices, Federal Trade Commission, to Barry J. Cutler, Esq., McCutcheon, Doyle, Brown & Enerson. (This letter is appended to several comments. *See, e.g.*, Exhibit 3 of AT&T comment or Appendix H of ISA comment.)

regardless of where it occurs in the program, the vendor shall provide a clearly discernible signal or tone indicating the end of the free time.

Several workshop participants indicated that some pay-per-call services would experience technical difficulties in inserting a tone at the end of the free period of time.[193] Other participants stated their belief that the original Rule did not require a tone at the end of the free portion of the call and that it was not necessary because consumers could watch their clocks and know when the free time expired.[194] Similar opinions were expressed in several of the written comments.[195] Conversely, one written comment specifically supported a requirement for a tone at the end of the free time to alert consumers to the fact that the free portion of the call was coming to an end.[196] That sentiment was echoed at the workshop by law enforcement officials who had received complaints from consumers who had actually timed calls themselves to stay within the ''free'' time but were charged anyway.[197] Proposed Section 308.6(b) would ensure that callers receive adequate notice of when charges begin, regardless of where in the program the free time is offered.

Section 308.7 Other Advertising Restrictions

Section 308.7 of the proposed Rule incorporates several sections of the original Rule that deal with advertising restrictions and adds three new subsections.

Use of electronic tones and referral to toll-free numbers. The proposed Rule retains the prohibition in the original Rule against using electronic tones in advertising.[198] It also retains the original prohibition against referring to toll-free telephone numbers in an advertisement if the toll-free number is used in a manner that violates the prohibitions in proposed Section 308.13.[199]

Disclosures in telephone message. The original Rule required any telephone message that solicits calls to a pay-per-call service to disclose the cost of the call in a slow and deliberate manner and in a reasonably understandable volume.[200] Section 308.7(b) of the proposed Rule retains that requirement and clarifies that the term ''telephone message'' includes telephone messages conveyed during calls placed by a consumer, as well as those conveyed during calls placed by the vendor or its agent. The Commission added this clarifying language in order to ensure that consumers receive the necessary disclosures regardless of who places the telephone call and regardless of whether the message the consumer receives is the result of an inbound or an outbound call.

Disclosures in facsimile message. New Section 308.7(c) of the proposed Rule clarifies that any facsimile message soliciting calls to a pay-per-call service must include all disclosures required by the Rule. Since the original Rule was promulgated in 1993, consumers have had increased access to facsimile machines at work and in the home—either as stand-alone machines or as part of a personal computer system. The Commission has received complaints from consumers regarding instances where consumers have received deceptive facsimiles soliciting calls to expensive international audiotext services.[201] Vendors who solicit calls to pay-per-call services by using this technology should be governed by the same disclosure requirements as those providers who advertise in other printed media. Therefore, this proposed section clarifies that pay-per-call service information transmitted to consumers via facsimile must make all the relevant disclosures required by the Rule, and that such disclosures must be provided in the manner required for print advertisements in proposed Sections 308.3 and 308.4(a)(2)(ii).

FCC regulations ban unsolicited facsimile advertisements.[202] The FTC's proposed Rule should not be read to permit unsolicited facsimile messages or any other practice that would be in violation of the FCC's rules. Therefore, Section 308.7(f) states that the FTC's proposed Rule should not be construed to permit any conduct or practice that the FCC otherwise has prohibited.

Use of pagers to solicit calls. New Section 308.7(d) of the proposed Rule clarifies that any beeper or pager message that solicits calls to a pay-per-call service must include all disclosures required by the Rule. The practice of soliciting calls in this manner has been the subject of numerous complaints over the past several years.[203] In some instances, consumers report receiving a page from a pay-per-call service that simply listed an area code and seven-digit number as the return number to call. The number flashed on the pager did not use a 900- or 976-number dialing pattern and thus could not be identified by the consumer as an audiotext service. Absent any explanation for the call, consumers reasonably assume that such pages indicate an urgent call from someone known personally or professionally. Upon dialing the number given on the pager and after later receiving a bill containing an expensive charge for the call, however, the consumer discovers that he or she has called an international audiotext service. Several commenters urged the Commission to design particular rules to prevent this practice and to prohibit all unsolicited messages left on pagers.[204] One commenter urged the Commission to prohibit more narrowly unsolicited pay-per-call advertisements on pagers.[205]

Given current pager technology, in all likelihood it is not possible for most pager solicitations to comply with the Rule's advertising disclosure requirements. Nevertheless, the Commission is not inclined to prohibit completely this method of advertising so long as such advertisements are not deceptive. Therefore, proposed Section 308.7(d) makes it clear that pager messages soliciting calls to a pay-per-call service will be treated like any other advertisement and thus must contain all relevant advertising disclosures required by the Rule. Vendors using this method of promoting their pay-per-call services are responsible for ensuring that all required disclosures are actually displayed by the consumer's beeper or pager; it is not sufficient to merely transmit this information with the hope that the recipient's beeper or pager is sophisticated enough to display all of the relevant disclosures.

FCC regulations prohibit the use of automatic dialers to call a number assigned to a paging service.[206] The FTC's proposed Rule should not be read to permit the use of automatic dialers to disseminate pay-per-call advertisements on beepers or pagers, or to permit any other practice that would be in violation of the FCC's rules. Therefore, Section

[193] Tr. at 522–25.

[194] Tr. at 528–29.

[195] PMAA at 9–12; TSIA at 17–18; ISA at 20–23.

[196] AT&T at 16–17.

[197] Tr. at 532.

[198] 16 CFR 308.3(g). The Commission believes this provision will play an important role in stopping scam artists from using the ''modem hijacking'' techniques that allegedly formed the basis of the scheme targeted in the Commission's complaint in *FTC* v. *Audiotex Connection*. Internet advertisements that ''emit electronic tones'' via a modem and cause such modems to disconnect and redial a pay-per-call service will violate this provision.

[199] 16 CFR 308.3(i).

[200] 16 CFR 308.3(h).

[201] See, e.g., ''Phone, E-Mail & Pager Messages May Signal Costly Scams,'' FTC Alert (Dec. 1996).

[202] 47 CFR 64.1200(a)(3).

[203] ''Sexy Calls Are a Headache for Pager Users,'' Memphis (TN) Commercial Appeal (March 2, 1995), p. 14–1. *See also*, ''Phone, E-Mail & Pager Messages May Signal Costly Scams,'' FTC Alert (Dec. 1996).

[204] SW at 3; NCL at 5.

[205] NCL at 5.

[206] 47 CFR 64.1200(a)(1)(iii).

308.7(f) states that the FTC's proposed Rule should not be construed to permit any conduct or practice that the FCC otherwise has prohibited.

Section 308.9 Preamble Message

Proposed Section 308.9 incorporates the provisions previously contained in Sections 308.5(a)–(e) of the original Rule, setting out the requirements relating to the introductory disclosure message (or ''preamble'') that must be provided without charge to callers to a pay-per-call service. The Commission proposes two substantive changes to this section. First, the proposed Rule requires specific disclosures for services billed on a ''variable time rate basis.'' Second, the proposed Rule adjusts the ''nominal cost'' exemption to the preamble requirement.

Variable option versus variable time rate basis. The proposed provision retains most of the language from the original provision, although the Commission added clarifying language to two of the subsections. Proposed Section 308.9(a)(2)(iii) details the manner in which the cost disclosure must be given, depending on whether the call is billed on a variable option rate basis or on a variable time rate basis. These changes parallel the proposed changes for disclosures in advertisements in proposed Section 308.4(a)(1)(iii). As in proposed Section 308.4(a)(1)(iii), the preamble cost disclosure for calls billed on a variable option rate basis are the same as those in the original Rule. In those instances where the call is billed on a variable time rate basis, however, the Commission has proposed that the preamble must state the cost of each different portion of the call (*e.g.*, ''The first five minutes are $5.99 per minute; thereafter, you will be charged $3.99 per minute'').[207]

Nominal cost calls. Currently, the Rule allows a vendor to provide a pay-per-call service without a free preamble if the entire cost of the call is $2.00 or less.[208] The comments suggest that this figure may be too low to encourage vendors to provide these low cost services to consumers.[209] Section 308.9(c) of the proposed Rule thus raises the maximum charge for a ''nominal cost'' call to $3.00.

Parental permission advisory. Both TDDRA[210] and the original Rule[211] require the preamble to state that anyone under the age of 18 must have the permission of a parent or legal guardian in order to call. Numerous commenters from industry urged that the Commission recommend to Congress that TDDRA be amended to change the parental consent requirement to reduce consumer confusion and to discourage minors from accessing adult-oriented material.[212]

To discourage minors from calling their services, some information providers prefer that the preamble present a stronger message—*i.e.*, that no one under 18 may place the call and that anyone under that age must hang up. The Commission agrees that such a statement is stronger than the warning required by the statutory language. Because it is stronger than the required warning, the statement subsumes the mandated statutory language. For this reason, the Commission believes that such statements would comply with the requirement for a parental consent disclosure.[213]

Section 308.10 Deceptive Billing Practices

Section 308.10(a)—Deceptive billing for services in violation of the Rule. This section of the proposed Rule replaces the ''billing limitations'' provision contained in Section 308.5(f) of the original Rule, which: (1) prohibited vendors from billing consumers in excess of the amount stated in the preamble for those services; and (2) prohibited billing for any services provided in violation of any section of the Rule. Proposed Section 308.10(a) treats each of these two prohibitions in separate subparagraphs and, for greater clarity and precision, substitutes the phrase ''collect or attempt to collect'' for the original phrase, ''billing consumers.'' This proposed modification is meant to ensure that the Rule protects not only those consumers who have already paid their bill, but also those who have not yet paid but who have received a bill containing a charge for services that violate the Rule. In addition, the proposed provision would prohibit a vendor from engaging in these collection activities either ''directly or indirectly.'' This is meant to clarify that the proposed Rule does not permit a vendor or service bureau to evade this provision by filtering the charges through a third party, such as a billing aggregator.

Finally, proposed Section 308.10(a) reformulates the prohibitions of 308.5(f) of the original Rule, specifying that they are deceptive practices. Attempting to collect charges for services that violate the Rule is a deceptive practice because the bills received by the consumer falsely indicate that the consumer must pay for these services when, in fact, the consumer is not legally obligated to do so. These are material misrepresentations that are likely to mislead reasonable consumers. Proposed Section 308.10(a) prohibits this deceptive practice, and has been re-titled to clarify the purpose of the provision.

Section 308.10(b)—Deceptive billing for time-based charges after disconnection by the caller. Section 308.5(g) of the original Rule required the provider of pay-per-call services to ''stop the assessment of time-based charges immediately upon disconnection by the caller.'' Section 308.10(b) of the proposed Rule contains this same provision and reformulates it to specify that this constitutes a deceptive practice. Charging a consumer for more time than the consumer actually used is appropriately designated to be a deceptive practice. Vendors are in the best position to accurately measure the amount of time a consumer spends using a pay-per-call service. Charging a consumer for more than this time misrepresents the amount of time a consumer spent using the service, and is likely to mislead reasonable consumers into paying for more time on the service than they actually used. Thus, the practice of charging a consumer for time-based charges after a consumer has hung up the telephone is a deceptive practice.

In the Statement of Basis and Purpose accompanying the original Rule, the Commission recognized that ''time-sensitive billing is accomplished in one-minute increments, and that any portion of a minute will be billed as full time.''[214] The Commission also stated then that billing in such a manner would ''not be considered a violation of this provision.'' In the Rule review, the Commission asked whether billing in fractions of minutes was now

[207] Proposed Section 308.9(a)(1)(iii)(B).

[208] 16 CFR 308.5(c).

[209] ISA at 26 (''a review of approximately 40,000 current 900 number applications revealed that only 725 of the these applications (many of which involved polling) were priced at $2.00 or below. The ISA expects, that if the FTC increased the threshold to $3.00, more [vendors] would consider offering services at or about $3.00 per call. As a result, the number of low-priced services available to the public should increase.'').

[210] 15 U.S.C. 5711(a)(1)(E) and 5711(a)(2)(A)(iv).

[211] 16 CFR 308.5(a)(4).

[212] *See, e.g.*, TPI at 4–5; ISA at 23–24; PMAA at 12–13; Tr. at 190–91 and 550–53.

[213] This statement is intended to supersede the position set out in the FTC staff opinion letter, dated May 17, 1994, from Heather L. McDowell, staff attorney, Federal Trade Commission, to William W. Burrington of the Interactive Services Association.

[214] 58 FR 42387 (August 9, 1993).

possible.[215] Comments revealed that fractional minute billing is now possible and is accomplished by some providers.[216] Although several commenters requested that they be permitted to use business discretion when choosing whether or not to use one-minute billing or to implement fractional minute billing, the Rule as mandated by Congress does not allow for such discretion. Title II of TDDRA requires that the Commission promulgate rules requiring providers of pay-per-call services to ''stop the assessment of time-based charges *immediately* upon disconnection by the caller.'' [217] Based on the current information contained in the record, the Commission believes that technology has made it possible to bill in increments smaller than one minute.[218] Thus, under the proposed Rule, billing in one-minute increments will no longer be acceptable.

Section 308.12 Prohibition Concerning Toll Charges

As discussed, *supra*, the Commission proposes extending the definition of ''pay-per-call services'' to include all audiotext services, regardless of the dialing pattern used to access the service.[219] The proposed definition would include many services offered over international or other long-distance numbers. By expanding the definition to cover these services, the Commission intends that the Rule should apply equally to all providers of audiotext, regardless of the dialing pattern used to access those services. The proposed Rule does not require that pay-per-call services be offered only over 900 numbers; rather, the Rule requires that, regardless of the telephone number used to access a service, the vendor and the service bureau must provide the service in a manner that complies with the Rule.

There was considerable discussion at the workshop relating to the issue of whether many of the basic consumer protections required by the Rule are technologically available in the international audiotext context.[220] In written comments, one commenter pointed out that international audiotext services could not comply with the Rule's cost disclosure requirements because vendors cannot determine this information in advance.[221] Several participants suggested that free preambles could not be inserted in international audiotext services because the international toll charges begin immediately upon connection, and because exact cost information could not be provided in the advertising or in a preamble due to the multitude of factors that affect the cost of an international telephone call (*e.g.*, the caller's carrier, calling plan, time of day called, origin of call).[222] Several LECs that bill for pay-per-call services indicated that currently it is impossible to ensure that calls to international audiotext services appear on a separate section of the telephone bill, as required by the original Rule,[223] because there is no identifiable dialing pattern associated with international audiotext services.[224] In addition to these important protections which are guaranteed by Titles II and III of TDDRA, international audiotext services, as a discrete category, cannot be blocked under Title I of TDDRA; *i.e.*, consumers can choose to block calls to all international telephone numbers or none at all, but cannot block calls only to selected international numbers that access audiotext services.[225] Moreover, a block on international dialing will not block calls to the Caribbean countries where many of these services terminate, because those countries are part of the North American Numbering Plan.[226]

These apparent technological difficulties in applying the Rule's consumer protections to international audiotext services prompted some commenters to suggest that, if the Commission were to extend the definition of pay-per-call services to cover international audiotext services, then the Commission should exempt these services from having to comply fully with the Rule.[227] On the other hand, one consumer organization condemned the notion that businesses that choose to offer audio information and entertainment services via international dialing patterns should be permitted to do so without providing all of the consumer protections contemplated by TDDRA.[228] Several commenters and participants supported the idea of requiring international pay-per-call services to be offered through 900 numbers, so that all of the consumer protections required by TDDRA and the Rule could be applied to such services.[229]

Based on the record and on the Commission's enforcement experience,[230] the Commission believes that the practice of disguising audiotext charges as long-distance or other telephone toll charges is inherently inconsistent with the protections set forth by Congress in Titles II and III of TDDRA. This is true for several reasons. First, billing statements containing these charges do not accurately identify the charges, nor do they meet the Rule's requirement in Section 308.5(j)(1)[231] that the charges be displayed in a portion of the bill that is ''identified as not being related to local and long-distance telephone charges.''

Second, international audiotext services cannot accurately disclose the costs callers will incur when they access the service.[232] It is insufficient to disclose that ''long-distance rates apply'' [233] or even that the rates are much higher than rates to some of the more familiar international destinations. TDDRA mandated that pay-per-call services disclose in advertising ''the total cost or the cost per minute.'' [234]

Third, according to the discussion at the workshop, current technology does not allow international audiotext to operate in such a way as to provide two of the other important protections intended by TDDRA: (1) a free preamble message that provides the caller with cost disclosures and the opportunity to hang up without incurring a charge; and (2) the ability to block access to these services without blocking access to other, non-audiotext, international numbers.[235]

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[215] 62 FR 11754 (March 12, 1997).

[216] AT&T at 14; US WEST at 6–7.

[217] 15 U.S.C. 5711(a)(2)(D). [Emphasis added].

[218] The Commission solicits comment on this determination.

[219] Excluding calls resulting in only *de minimis* payments to information or entertainment providers, presubscription agreement services, calls utilizing telecommunications services for the deaf, and tariffed directory services provided by a common carrier. Proposed Sections 308.2(g)(2)–(3).

[220] Tr. at 393–460.

[221] ISA at 27.

[222] TSIA at 20–21; Tr. at 345, 393.

[223] 16 CFR 308.5(j)(1).

[224] Tr. at 440–41.

[225] *See, e.g.*, ALLIANCE at 2–3.

[226] Tr. at 432.

[227] ISA at 27.

[228] Tr. at 418 (NCL: ''What I am really hearing is that it is probably technically feasible to give consumers the same types of protections but it is not currently economically feasible, but nobody is forcing information providers to use international numbers to provide their services. That's a choice that they are consciously making. We're being asked essentially to countenance this choice to use these numbers and to not give consumers the same protections that we felt so strongly they were entitled to with 900 numbers, because it would be too expensive for the companies to do so, resulting in what—what we have seen as tremendous harm, economic harm, to consumers.'')

[229] SNET at 2; SW at 2; AT&T at 29–30; Tr. at 344, 369.

[230] *See, e.g., FTC* v. *Daniel B. Lubell*, No. 3–96–CV–8200 (S.D. Iowa, filed Dec. 17, 1996) and *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed April 22, 1998).

[231] This provision is found in 308.18(a) of the proposed Rule.

[232] *See, e.g.*, ISA at 27; ITA at 11–12.

[233] *See, e.g., Interactive Audiotext Services* and *Daniel B. Lubell.*

[234] 15 U.S.C. 5711(a)(1)(A) and (2)(A)(ii).

[35] Tr. at 429–32. There seemed to be some disagreement between at least one of the common

Fourth, consumers who receive charges for international pay-per-call are not able to exercise their dispute resolution and other rights guaranteed by TDDRA. Long-distance toll charges are expressly excluded from the statutory definition of ''telephone-billed purchase'' and thus are not covered by the billing and collection protections of Title III of TDDRA.[236] By concealing a pay-per-call charge within an international telephone toll charge, a vendor effectively evades the requirement to fulfill the consumers' dispute resolution rights under Title III. By relying on a billing and collection system for toll charges—a system designed to guarantee payment to carriers for telecommunications transport services they provide—international audiotext service providers remain safely insulated from injured consumers who have no means to pursue refunds for international audiotext charges that may be incurred as a result of deceptive practices.[237] Domestic long-distance carriers sometimes forgive these charges as a means of cultivating consumer goodwill, but in doing so they are willingly forfeiting payment for services rendered—*i.e.*, long-distance transport of the call. Prohibiting vendors from disguising charges for information or entertainment services as toll charges will prevent consumers and common carriers from having to bear this loss.

In sum, the Commission believes that concealing a pay-per-call charge within a telephone toll charge is a practice that is inherently deceptive because it evades all of the important protections intended by TDDRA that are set out in the original Rule. The Commission intends for consumers to receive all the protections of Title II and Title III of TDDRA when using any pay-per-call service. The practice of hiding the cost of an audiotext call within the cost of a toll charge represents a serious threat to this goal.

Congress realized that it could not anticipate all provisions that might be necessary to prevent unfair, deceptive, or abusive practices that would undermine the rights afforded to consumers by TDDRA. Therefore, Section 5711(a)(2)(J) of TDDRA gave the Commission the flexibility to prescribe ''such additional standards'' as may be needed ''to prevent abusive practices.'' Additionally, in Title II of TDDRA, Congress directed the Commission to include in its Rules provisions to:

> prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers * * *, including the use of alternative billing or other procedures [emphasis added].[238]

Similarly, Title III of TDDRA directs the Commission to include provisions in its Rules to:

> prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under [Title III of TDDRA].[239]

The record developed in this matter leaves little doubt that the practice of concealing a charge for audio information or entertainment services within a regulated toll charge has eroded the vital consumer protections provided by TDDRA.[240] Thus, proposed Section 308.12 provides that a vendor may not offer a pay-per-call service that would result in the consumer receiving a charge for a toll call. The most frequent example of this practice is international audiotext, where the consumer is billed for an international long-distance call and a portion of the long-distance charge paid by the consumer is shared with the provider of the audio information or entertainment.[241] In addition, the Commission is aware of other situations where consumers have been assessed ''toll'' charges that are, in fact, charges for information or entertainment programs, not transmission of telecommunications.[242]

Much of the language from Section 308.12 is taken from the TDDRA definition of ''telephone-billed purchase.'' This will ensure that the proposed Rule will prohibit precisely those types of pay-per-call services that would not be covered by the dispute resolution protections guaranteed by Title III of TDDRA. The Commission believes that this is essential in order to protect the rights afforded to consumers by TDDRA. Whenever a consumer is billed for pay-per-call services that result in a toll charge, the vendor of that pay-per-call service will have violated the proposed Rule.[243]

Section 308.13 Prohibitions Concerning Toll-Free Numbers

Section 308.13 of the proposed Rule retains the provision in Section 308.5(i) of the original Rule prohibiting any person from using a toll-free number to provide access to or delivery of pay-per-call services. Sections 308.13(a) through (d) of the proposed Rule have been modified to clarify and emphasize that a consumer cannot be held responsible for charges resulting from a presubscription agreement into which he or she did not enter. In addition, Section 308.13(c) clarifies that no consumer may be charged for information or entertainment conveyed during a call to a toll-free number, unless that consumer has agreed to be charged for the information or entertainment by entering into a presubscription agreement that satisfies the requirements of the proposed Rule.

The Commission also proposes changing the language of 308.13(d) to provide that the prohibition applies to all incoming calls for which there is a charge, regardless of whether or not they are characterized as ''collect'' calls.[244] The Commission also proposes modifying the language of proposed Sections 308.13(c) and (d) to clarify that the prohibitions against charging for the content of an outbound or inbound call include entertainment services as well as information services. This will more effectively implement the Congressional mandate set forth in Title II of TDDRA that the Commission prohibit vendors ''from providing pay-per-call services through an 800 number or other telephone number advertised or widely understood to be toll-free.'' [245] Since pay-per-call services include

carriers and the international audiotext providers as to whether free preambles could be provided at the beginning of international audiotext services. The MCI representative suggested that international services could be offered via a 900 number and that would enable a free preamble to be provided. Tr. at 345–46. In any event, the FCC has no jurisdiction over foreign common carriers to require them to implement TDDRA-like blocking on their audiotext lines.

[236] 15 U.S.C. 5724(1)(B).

[237] Tr. at 443–61. *See also, e.g., Daniel B. Lubell.* In fact, one advertisement for an international audiotext service bureau boasts that vendors who use their services suffer ''No Chargebacks!'' InfoText Magazine (May/June 1996), front cover.

[238] 15 U.S.C. 5711(a)(4).

[239] 15 U.S.C. 5721(a)(1).

[240] As one commenter stated: ''The financial impact of pay-per-call service abuses which occur over non-900 dialing patterns is staggering. Unsuspecting consumers run up huge amounts of debt, especially for international calls. Even authorized users are taken aback at the high dollar amounts charged to call these numbers.'' SW at 4.

[241] *See, e.g., Daniel B. Lubell; FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed April 22, 1998). *See also, Wisconsin* v. *Top Communications, Inc.*, No. 95 CV 200 (Cir. Ct., filed Jan. 10, 1997).

[242] *See* letter dated September 1, 1995, to Ronald J. Marlowe of Cohen, Berke, Bernstein, Brodie, Kondell & Laszlo, from John B. Muleta, Chief, Enforcement Division, Common Carrier Bureau, Federal Communications Commission, regarding the legality of providing information and entertainment programs through calls to long-distance numbers, which would be reached by dialing a 10–XXX number, a 500-number, or a 700-number. The FCC concluded that such arrangements would violate ''both the letter and the spirit'' of TDDRA and Section 228 of the Communications Act of 1934, as amended.

[243] In all likelihood, the service bureau will have violated this provision as well because the service bureau ''should have known'' of this violation.

[244] The Commission uses the term ''collect call'' in its most general sense to refer to any instance where a consumer incurs a charge by virtue of answering or accepting a telephone call.

[245] 15 U.S.C. 5711(a)(2)(F).

entertainment services in addition to information services, this section also should include entertainment services.

Section 308.14 Monthly or other recurring charges

Section 308.14 of the proposed Rule prohibits a vendor from providing a pay-per-call service that results in a monthly or other recurring charge to a consumer, unless that vendor and consumer have entered into a presubscription agreement that authorizes such monthly or other recurring charges. The proposed Rule also states that the presubscription agreement must meet the requirements of § 308.2(j).

There was discussion at the workshop concerning unexpected and unauthorized recurring pay-per-call service charges on consumers' telephone bills, often in connection with ''psychic'' services.[246] Consumer organizations have received numerous complaints about such unauthorized recurring monthly charges.[247] Several participants described scenarios where a consumer had made a call to an 800 number and then unexpectedly began to incur monthly charges on his or her phone bill.[248] Several commenters and participants suggested that the problem of unauthorized recurring charges could best be remedied by requiring a presubscription agreement for all such charges.[249]

The Commission agrees that such an approach is appropriate. The Commission believes that, when compared to the one-time purchase of an audiotext program, the continuing business relationship between a provider and a caller that is involved in long-term membership would likely entail more terms and conditions (and more complicated terms and conditions), as well as higher long-term costs. A presubscription agreement, with its requirements for written terms and a PIN, is therefore a more appropriate, and likely a more effective, format for disclosures of this information about telephone-billed purchases that involve recurring charges than is a preamble. As noted above, in most cases, the Commission believes that a vendor is justified in assuming that a call from a consumer's telephone to a 900-number service (and ensuing charges for the service) have been authorized by that consumer, since the consumer could have easily blocked the call and avoided the charges. Such an assumption is not justified, however, where a single call to a pay-per-call service results in charges, not only for the initial call, but monthly or other recurring charges that cannot be blocked, even though the initial call could have been. A single call to a pay-per-call service from a consumer's home is simply not an adequate basis for recurring charges. Thus, under the proposed Rule, a presubscription agreement would be required for all such arrangements.

Section 308.16 Service Bureau Liability

Proposed Section 308.16 retains the provision of the original Rule which held service bureaus liable where they knew or should have known of violations of the Rule by vendors of pay-per-call services. However, where the original Rule contemplates service bureau liability only in those instances where its ''call processing facilities'' are used,[250] the proposed Rule expands the circumstances under which a service bureau may be found to be indirectly liable—*i.e.*, where a law-violating vendor has availed itself of any of the services offered by a service bureau. Since adoption of the original Rule, the capabilities and offerings of service bureaus has greatly expanded to include services such as voice processing, call processing, billing aggregation, call statistics (call and minute counts), call revenue arrangements (including revenue-sharing arrangements with common carriers), and pre-packaged pay-per-call investment opportunities (''turn-key operations'').[251] Some of these newly-available service bureau functions (*e.g.*, acting as an aggregator for billing and collection) have given rise to many consumer complaints about cramming. Service bureaus that perform these functions are in the best position to know the practices of their client vendors because they contract directly with these vendors and because they are often the first point of contact for consumer complaints about charges for their client-vendors' services or products. While the original Rule contemplated that a service bureau would be liable only for violations of a vendor when the vendor of pay-per-call services had used its call processing facilities, experience has demonstrated there is no reason to distinguish those services from any others provided by service bureaus. Thus, the proposed Rule imposes liability on a service bureau regardless of the service it provides a rule-violating vendor, if the service bureau knew or should have known of the violation.[252]

Subpart C—Pay-Per-Call Services and Other Telephone-Billed Purchases

Section 308.17 Express Authorization Required

Section 308.17 of the proposed Rule specifies that the ''express authorization of the person to be billed'' is required for a telephone-billed purchase that is not blockable by TDDRA blocking. The proposed section also specifies that it is a deceptive practice and a Rule violation for any vendor, service bureau, or billing entity to collect or attempt to collect payment, directly or indirectly, for a telephone-billed purchase that was not TDDRA blockable, where the vendor, service bureau, or billing entity knew or should have known that the purchase was not authorized by the person from whom payment is being sought.

Requirement of authorization. Generally, purchases of goods or services require some form of authorization from the purchaser—that is, the purchaser must indicate some intent or desire to make the purchase.[253] Telephone-billed purchases are no exception to this broad legal principle. For telephone-billed purchases that can be blocked by TDDRA blocking, the Commission believes it is reasonable for a vendor to presume that a call that comes from a telephone subscriber's telephone was authorized by that subscriber. After all, if the subscriber wanted to prevent these types of charges from being made through his or her telephone, there is a cost-free and simple method to do so: TDDRA blocking. Election of TDDRA blocking will not require the line subscriber to sacrifice other valuable uses of his or her telephone—he or she will still be able to use the telephone for any purpose other than making TDDRA-blockable telephone-billed purchases.

[246] Tr. at 382–84, 498–505.

[247] See, e.g., NCL at 4.

[248] Tr. at 498–500.

[249] NCL at 5; FLORIDA at 8; NAAG at 11; TSIA at 16–17; Tr. at 498.

[250] 16 CFR 308.5(l).

[251] *See, e.g., FTC* v. *Hold Billing Services, Ltd.*, No. SA98CA0629 FB (W.D. Texas, filed July 19, 1998); *FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998); and *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed April 22, 1998). *See also*, ''9th Annual Service Bureau Review,'' InfoText Magazine (July/August 1997).

[252] In some circumstances, a service bureau will always be in a position where it should know of a vendor's violation. For example, service bureaus should know if they are providing services to vendors of pay-per-call services that result in toll-charges. In such instances, a vendor will be in violation of proposed Section 308.12, and a service bureau providing services to that vendor will be liable under proposed Section 308.16 (Service bureau liability).

[253] Restatement (Second) of Contracts (''Restatement'') § 23 (1979).

However, where a telephone-billed purchase is not TDDRA blockable, the Commission does not believe that it is reasonable for vendors to presume that telephone-billed purchases made from a subscriber's telephone were, in fact, authorized by that subscriber. A line subscriber has no effective means of preventing these purchases from being made, short of monitoring the placement and content of every telephone call made from his or her telephone. A merchant is not entitled to presume that the line subscriber has agreed to pay for a good or service merely because that subscriber's telephone was used to order a product or service. A consumer is no more obligated to pay for a non-blockable telephone-billed purchase made from his or her telephone than the consumer is obligated to pay for any other purchase (for example, a purchase of a sweater from a clothing catalog) that just happened to be made from that consumer's telephone.[254]

Meaning of the term ''express authorization.'' As explained in the discussion of the proposed new billing error in section 308.2(b)(10) of the proposed Rule, the Commission uses the term ''express authorization'' to indicate that the authorization contemplated by the proposed Rule cannot be inferred from the fact that a telephone call came from a specific telephone. ''Express'' authorization requires that the person to be billed for the service actually agree to make the purchase. For example, a tape recording of the person to be billed for the service being informed of the material terms of the agreement and then agreeing to make the purchase on those terms and pay the charge, would constitute evidence of express authorization.[255] Similarly, an agreement containing a non-deceptive statement of material terms and conditions and signed by the person to be billed for the service, would be evidence of express authorization. If a valid PIN (as that term is defined by the proposed Rule), were used by the caller, after hearing all the material terms of the agreement, that would also constitute evidence of express authorization.[256]

Deceptive billing practice. A consumer is not legally obligated to pay charges for a telephone-billed purchase that falls within the Rule's enumerated billing errors. As discussed above, the proposed Rule would include within the term ''billing error'' charges arising from unauthorized, non-blockable telephone-billed purchases. Therefore, a representation to a consumer that he or she owes a charge for a telephone-billed purchase that was not, in fact, expressly authorized by that consumer is likely to mislead a reasonable consumer into paying a charge that is not collectible under the Rule. Proposed Section 308.17 thus prohibits vendors, service bureaus, or billing entities from collecting or attempting to collect charges that result from an unauthorized, non-blockable telephone-billed purchase, if the vendor, service bureau, or billing entity knew or should have known that such charges were not authorized by the person from whom payment is being sought.

Limited applicability—''Knew or should have known.'' Proposed Section 308.17 applies where the vendor, service bureau, or billing entity ''knew or should have known'' that the charge was not authorized by the person from whom payment is being sought. This standard encompasses not only those circumstances where a vendor, service bureau, or billing entity had actual knowledge that a particular consumer was charged without authorization, but also circumstances where the vendor, service bureau, or billing entity should have known that numerous consumers were likely to have been billed without authorization.

The Commission believes that it is unnecessary to impose strict liability on the vendor, service bureau, or billing entity for each time an attempt is made to collect an unauthorized charge. The Commission believes that in most cases, the dispute resolution provisions of proposed Section 308.20 should supply an adequate remedy for consumers who receive these types of unauthorized charges on their telephone bills. Therefore, the Commission proposes limiting the applicability of this section to those circumstances where a vendor, service bureau, or billing entity ''knew or should have known'' of the lack of authorization.

Parties affected—Vendors, service bureaus, and billing entities. Proposed Section 308.17 would apply to vendors and service bureaus because these entities are responsible for structuring and offering the underlying service, and they are in a position to know, with respect to any particular offering, whether sufficient steps were taken to ensure that express authorization has been obtained. Vendors are most directly in control of how their own transactions are conducted and the procedures used to secure authorization. They are in a position to know whether or not those procedures are effective in securing actual authorization from the person who will be billed for the service. Service bureaus are in a similarly strong position to demand (by contract or otherwise) that responsible procedures be used by the vendor to secure express authorization, and are in an excellent position to monitor vendors to ensure that adequate precautions are being followed.

In addition to covering vendors and service bureaus, proposed Section 308.17 also applies directly to billing entities.[257] These entities (in most cases LECs) play a unique and critical role in the billing of products and services on telephone bills. They are frequently in a position to know if the wrong consumer has been billed, because often they are the first point of contact for consumer complaints. Any billing entity that receives complaints from consumers who are being charged without their express authorization is on notice of the problem, and should take immediate action to stop the unlawful billing or risk violating proposed Section 308.17.[258]

Section 308.18 Disclosure Requirements for Billing Statements.

Section 308.18 of the proposed Rule is a revised version of Section 308.5(j) of the original Rule. The original provision applied only to billing statements for pay-per-call services, whereas the proposed revision requires disclosures to be placed on billing

[254] This was illustrated in two of the Commission's recent cases. *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed April 22, 1998); and *FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998). These situations can easily be distinguished from a consumer's obligation to pay for any tariffed charges for basic telecommunications service resulting from calls made from his or her telephone. First, basic telecommunications services are most often purchased from an entity with whom the consumer has a pre-existing and voluntary relationship. More importantly, consumers accept basic telecommunications services on terms and conditions that are regulated by the FCC, from carriers that are under a statutory duty to ensure that the services provided to consumers in a manner that is deemed ''just and reasonable.'' 47 U.S.C. 201.

[255] It is important to reiterate that the recording must show that the person to be billed for the service authorized the charge.

[256] For example, if a LEC were to issue a secure PIN to subscribers, the LEC could require subscribers to use this PIN when ordering enhanced services.

[257] Where a common carrier is also a billing entity, liability may already exist under Title I of TDDRA where the carrier knew or should have known of the violation. 47 U.S.C. 228(e)(1). Billing entity liability under proposed Section 308.17 would complement this Title I provision.

[258] The Commission supports the efforts of the LECs and the FCC in developing ''best practices'' guidelines to prevent cramming. Proposed Section 308.17 should work in complementary fashion to fight this harmful practice.

statements for all telephone-billed purchases.

Subsection 308.18(c) identifies those disclosures that will still be required only in billing statements for pay-per-call purchases. This subsection includes the substance of section 308.5(j)(2) of the original Rule, but also requires that the billing statement list the actual telephone number dialed for any pay-per-call purchase. Representatives from the LECs and other common carriers reported at the workshop that it was not uncommon for calls to be represented as having been made to one number when the consumer had actually dialed some other number.[259] The Commission's enforcement experience confirms this. This practice of misrepresenting on a billing statement the number purported to have been dialed (and giving rise to the charge) is likely to mislead the consumer in attempting to understand his or her bill. It is also confusing to the LEC when it tries to identify a disputed call. The practice deprives consumers of material information about the actual nature of the charges allegedly owed.[260] Therefore, the Commission believes that it is necessary that a billing statement accurately reflect the telephone number dialed by the caller. This information, coupled with the date, time, and duration of the call, should be sufficient information for both the consumer and the LEC to identify a particular call in the event of a dispute.

Subsection 308.18(d) of the proposed Rule modifies the requirements of Section 308.5(j)(3) of the original Rule by expanding the provision to cover all telephone-billed purchases, not just pay-per-call purchases. The proposed provision retains the requirement that billing statements display a local or toll-free telephone number where consumers can obtain answers to questions and information about their billing rights and obligations in connection with telephone-billed purchases. The revised section also retains the requirement that consumers must be able to obtain the name and mailing address of the vendor by calling that number. In addition, the proposed Rule specifies that the consumer must be able to readily obtain this information when he or she calls the number listed on the statement.

[259] Tr. at 159–62 (SW reported that companies had submitted charges for 900 numbers that were never dialed). *See also*, Tr. at 203–05; 233–38 (PILGRIM reports that calling card calls and calls to 800 numbers are reported on consumers' billing statements as 700 numbers).

[260] For example, consumers who receive bills that do not accurately reflect the telephone number dialed will not be able to compare the charges on the bill to the charges disclosed in an advertisement soliciting calls to a specific telephone number.

Several commenters and participants in the workshop reported widespread complaints from consumers who were unable to obtain information from LECs or billing aggregators about charges or about the identity of the vendor.[261] In some instances (e.g., international pay-per-call services), a consumer can only get the name of the foreign telephone company from his or her long-distance provider, but not the identity of the audiotext service provider with whom the foreign carrier splits the revenues collected from the consumer.[262] In some cases, consumers who call a listed customer service 800 number are unable to get through, and often give up in frustration or write to consumer or law enforcement agencies.

NAAG recommended that the bill list the name of the actual vendor so consumers can take a dispute directly to that party in the first instance instead of going through the LEC and/or the third-party billing and collection entity.[263] Industry representatives countered that many vendors do not have the capability to respond to routine billing inquiries; furthermore, industry noted that there are limitations on the amount of information that can be printed on the bill.[264] In the alternative, NAAG recommended that the entity whose name and number appear on the bill must have ultimate authority for handling disputes and issuing refunds or credits.[265] In response, industry countered that billing and collection entities already have full authority to satisfactorily resolve any dispute.[266]

The Commission believes that it is important that billing entities and vendors be accountable to their customers. However, the Commission also is mindful that such protections must be balanced against the cost to industry. The Commission does not believe that it is necessary to list the name of the vendor on the bill, as long as the entity listed on the bill is the party with authority to answer questions and to resolve disputes, including authorizing a refund or credit.

[261] NAAG at 12–13; Tr. at 114–16, 173–74, 262–65. One of the NAAG representatives described the frustration consumers often feel when attempting to inquire about charges on their telephone bills in this way: ''By the time consumers get to us * * * they are tremendously angry, and part of this anger comes from having to go through this maze to discover, if they can, who put the charges on the bill.'' Tr. at 173–174. The Commission's enforcement experience confirms this observation.

[262] Tr. at 115.

[263] NAAG at 13. *See also*, Tr. at 255, 263–64.

[264] Tr. at 258–59.

[265] Tr. at 263–64.

[266] Tr. at 265.

Section 308.19 Access to information

The proposed Rule retains the requirement from Section 308.6 of the original Rule that common carriers who provide telecommunications services to any provider of pay-per-call services must make available to the Commission, upon request, any records and financial information maintained by such carrier relating to the arrangements between the two entities. However, the proposed Rule expands that requirement to include records and financial information relating to arrangements with vendors of other telephone-billed goods or services, as well as to arrangements with service bureaus.

The rapid growth of telephone-billed purchases (other than pay-per-call), and the rapid growth of problems associated with such purchases has shown that there is no rationale for limiting this requirement as the original Rule did. Whenever a common carrier provides telecommunications services to a vendor that offers any type of telephone-billed goods or services (including pay-per-call), it should provide to the Commission, upon request, any records and financial information relating to its arrangements with those vendors. In addition, since the original Rule was promulgated, it has become clear to the Commission that, in most cases, the business arrangement exists between the common carrier and the service bureau, and not directly between the carrier and the vendor. Thus, on a practical level, a requirement limited to information regarding vendors will not result in meaningful information when, in many cases, the carrier will only possess the relevant information with respect to the service bureau.

Section 308.20 Dispute Resolution Procedures

Section 308.20 of the proposed Rule is a revision of Section 308.7 of the original Rule, which was titled ''Billing and collection for pay-per-call services.'' The proposed Rule changes the title to ''Dispute Resolution Procedures'' because the Commission believes this title more accurately reflects the substance of the section.[267] Although much of the language in the original section has been retained, the Commission has revised several provisions in this section to clarify the responsibilities of the parties, enhance consumer protections by closing loopholes, and increase the efficiency of the billing process, thus reducing the burden on industry.

[267] Proposed Section 308.20 implements Title III of TDDRA, 15 U.S.C. 5721–5724.

TDDRA requires that the Commission impose requirements that are substantially similar to the requirements imposed under TILA and FCBA with respect to the resolution of credit disputes.[268] TDDRA also directs the Commission to consider the extent to which the regulations should diverge from the requirements of TILA and FCBA in order to protect consumers as well as be cost effective to billing entities.[269] The proposed Rule preserves, wherever feasible, the balance struck by the original Rule. However, as described in more detail, *infra*, there are a number of instances where the Commission now believes that some additional divergence from TILA and FCBA may be necessary to protect consumers.

Definitions. As discussed *supra*, the definitions contained in Section 308.7(a) of the original Rule have been moved to Section 308.2 of the proposed Rule and have been incorporated alphabetically into the other definitions.

Clarification of the 60-day time limit to initiate a billing review. In proposed Sections 308.20(a) and 308.20(m), the Commission has clarified the meaning of the time limit within which the consumer may initiate a billing review. The original Rule provided:

> A customer may initiate a billing review * * * by providing the billing entity with notice of a billing error *no later than 60 days* after * * * the first billing statement that contains [the charge]. (emphasis added) [308.7(b)]

Many industry members interpreted that provision to mean that the billing entity (generally the LEC) was prohibited from allowing any challenges to a bill containing charges for telephone-billed purchases after the 60-day period had ended.[270] Conversely, the LECs understood the provision to mean that they were required to give the consumer at least 60 days to dispute a charge, but that they were not prohibited from giving the consumer more time.[271] The Commission did not intend that the original Rule require a billing entity to refuse to honor a dispute raised after 60 days. Rather, consumers must raise a dispute within 60 days in order to preserve their rights under this section, including the right to an investigation and protection against further collection activity while the dispute is under investigation.[272] In order to clarify this, the Commission has added an explanatory phrase at the beginning of proposed Sections 308.20(a) and (m) indicating that a consumer must initiate a billing review within 60 days of receiving the bill ''in order to be guaranteed the protections provided by the Rule.'' This language, however, does not prohibit the LECs from honoring disputes (and providing refunds) raised after the 60-day period has expired.[273]

Facilitating the reporting of a billing error. Consumers should be able to report billing errors easily. The Commission does not intend that any consumer waive his or her right to invoke the dispute resolution protections guaranteed by the Rule simply because he or she used the wrong words in a billing error notice. Therefore, Section 308.20(a) of the proposed Rule modifies the language of original Section 308.7(b) to clarify the consumer's burden with respect to reporting a billing error. Under proposed Sections 308.20(a)(2) and (a)(3), a billing error notice need not indicate a belief that there is a ''billing error'' (as that term is defined by proposed Section 308.2(a)); rather, it need only indicate a belief that there is an error of some kind. The purpose of the consumer's notice is to alert the billing entity of a potential problem, not to fully assert a list of facts, which if true, would constitute a ''billing error.'' Notices that would satisfy the proposed requirement include but are not limited to statements such as: ''There is something wrong with my bill,'' ''Nobody was at home that day,'' ''I did not order these services,'' ''I did not make these calls,'' ''I do not know what these charges are for,'' ''This is not what I paid for,'' or ''These were supposed to be free.''

After receiving a notice from the consumer indicating that there is some sort of problem or error with the billing statement, the billing entity then has the burden under proposed Section 308.20 to determine whether there was, in fact, a ''billing error.'' Until it makes such a determination, a billing entity may not attempt to collect the disputed charges. It is the billing entity, not the consumer, who bears the responsibility of knowing the potential billing errors that may be involved in a given telephone-billed purchase. For example, if a billing entity has charged a customer for a ''telephone-billed purchase * * * that would not have been avoided by that customer's election of blocking pursuant to 47 U.S.C. 228(c)'' as described by proposed 308.2(b)(10), and the customer subsequently submits a billing error notice, the billing entity is obligated to provide some supporting evidence that the customer being billed had ''expressly authorized'' that purchase in advance (e.g., by the voice recording or signature of the person being billed, reliably indicating authorization to bill for a specified product or service).

Requirement that a reasonable investigation be conducted if collection attempted on disputed charge. Several commenters expressed concern that in many, if not most, circumstances where a consumer has submitted a billing error notice, no one (neither the billing entity, the vendor, nor the service bureau) provides supporting evidence to the consumer showing that a disputed charge is in fact valid.[274] NAAG stated that, in many instances, the vendor or its agent simply sends a form letter stating that the call originated from the consumer's phone number and, thus, the consumer must pay the charge.[275] The Commission believes that a consumer who disputes a telephone-billed purchase charge under the Rule should not have to pay that charge unless a billing entity conducts a reasonable investigation of the validity of the charge and determines that there was no billing error. The Commission also believes that the consumer who disputes the charge should be entitled to documentary evidence of the charge's validity, and a written explanation of the billing entity's conclusion that no billing error occurred. Section 308.20(f) of the proposed Rule requires that, once a customer has submitted a billing error notice to a billing entity, the customer need not pay the charge until a reasonable investigation of the charge has been conducted, and until the customer has received the written explanation and documentary evidence setting forth that no billing error has occurred.

Secondary collection activities by billing entities other than the one designated to receive and respond to billing errors. If a billing entity receiving the billing error notice decides to respond to that notice by forgiving the disputed charge, it has no further obligation to conduct a reasonable

[268] 15 U.S.C. 5721(a)(2).

[269] 15 U.S.C. 5721(d)(10).

[270] Tr. at 25, 44, 63–64, 271–78.

[271] Tr. at 49–50, 101–03.

[272] Tr. at 245, 248, 274–75.

[273] As discussed *infra*, the proposed Rule also imposes new restrictions on the billing entities (generally the LECs) who initially deal with consumers. These new restrictions are designed to address vendors' complaints that they experience difficulty obtaining timely customer information from LECs.

[274] Tr. at 149–50; SNET at 7; FLORIDA at 2–3, 11; SW at 3, 8–10.

[275] Tr. at 150. See also, *FTC* v. *Hold Billing Services, Ltd.*, No. SA98CA0629 FB (W.D. Texas, filed July 19, 1998); *FTC* v. *International Telemedia Associates, Inc.*, No. 1–98–CV–1935 (N.D. Ga., filed July 10, 1998); and *FTC* v. *Interactive Audiotext Services, Inc.*, No. 98–3049 CBM (C.D. Calif., filed April 22, 1998).

investigation. In these circumstances, the billing entity generally passes the charge back to the vendor, who often tries to collect on its own or through the services of some third party. Under the original Rule, only one billing entity was obligated to comply with the dispute resolution provisions of the Rule. This meant that these secondary collection efforts by later billing entities were not subject to the Rule's dispute resolution process—the consumer who has raised a billing dispute may continue to be pursued for collection, but never have the right to receive evidence that a valid debt was owed.[276]

In order to address this problem, the Commission proposes a modification of former Section 308.7(o). Proposed Section 308.20(n)(2) specifies that, once a billing entity has forgiven a disputed telephone-billed purchase charge, no billing entity may attempt to sustain charges for a telephone-billed purchase unless a reasonable investigation has been conducted and the consumer has received a written explanation of the charges and evidence of the debt. The proposed revision brings within the scope of the provision those situations involving multiple billing entities when a vendor (or its agent) attempts to collect after a LEC has forgiven a charge without providing any explanation.

The proposed revisions will prevent consumers from being subjected to secondary collection efforts without ever receiving any explanation or proof that the charges are valid. Although the proposal goes marginally further than the analogous requirements set out in TILA and FCBA, the Commission believes the revisions are appropriate. In several recent cases, the Commission has addressed the issue of vendors or billing entities attempting to collect charges from a consumer without providing any evidence that those charges were valid, other than the fact that the charges purportedly were accessed or received on the consumer's telephone line.[277]

Proposed section 308.20(f) prohibits collection activity by a billing entity once the charge has been disputed with any billing entity, regardless of whether the two entities are the same. This means that, where there are multiple billing entities, an entity should not attempt to collect a charge before verifying with the other entities that, if a billing error notice has been sent by the consumer, a reasonable investigation of the charge has been conducted.[278] If such verification is not possible, a billing entity should not engage in secondary collection activities unless it first conducts the reasonable investigation of the validity of the charge, and provides the written explanation to the consumer in accordance with the 308.20(c)(2) of the proposed Rule.

Scope of ''reasonable investigation.'' The Commission proposes modifying original Section 308.7(d)(2) to remedy a somewhat awkward requirement of the original Rule. Under this section, a billing entity that received a billing error notice may either (i) correct the error and credit the customer's account, or (ii) conduct a reasonable investigation of the legitimacy of the charge, and transmit an explanation to the customer setting forth the reasons why the billing entity has determined that no billing error has occurred ''or that a different billing error occurred from that asserted'' by the customer. Under a literal reading, this creates the bizarre result that a billing entity conducting a reasonable investigation would be required to articulate to a customer that a billing error did occur, but the billing entity would not be required to correct the error and credit the customer's account. This provision could be read to require the customer to once again transmit a billing error notice specifically listing the error cited by the billing entity, and then wait for the billing entity to correct the error and credit the account. In revising this Section, the Commission intends to make it clear that these additional steps are not required.

Under the proposed Rule, a billing entity is not obligated to tell the customer exactly what billing error did or did not occur. Instead, under proposed Section 308.20(c)(2), in response to a billing error notice, a billing entity may either (i) correct any billing error and credit the customer's account, or (ii) conduct a reasonable investigation into the legitimacy of the charge, and transmit a written explanation (including documentary evidence) that the charge is indeed valid (*i.e.*, that ''no billing error'' occurred). The effect of this change will be to clarify a billing entity's obligations under the Rule.

Finally, the proposed Rule specifies that a reasonable investigation and written explanation address every relevant billing error, and ''address with particularity'' the facts asserted by the customer in the billing error notice. These revisions are designed to clarify that billing entities must do more than merely send the customer a non-responsive form letter to reply to a billing error notice. A response to a billing error notice must provide evidence to the customer that the charge is valid (*i.e.*, that ''no billing error'' occurred). The statement cannot be sent to a customer automatically or by rote—it must be preceded by a *bona fide* investigation to gather the information showing the validity of the charge. Under the proposed Rule, this investigation, where necessary, should include contacting the customer for further details in addition to contacting the vendor, service bureau, or providing carrier.

Limitation on the rebuttable presumption created by documentary records. The proposed Rule also amends the footnote previously found in Section 308.7(d)(2)(ii), now Section 308.20(c)(2)(ii) of the proposed Rule. The original footnote established a rebuttable presumption that goods or services were actually delivered if the billing entity produced documents showing the date on, and place to, which the goods or services were transmitted or delivered (*e.g.*, an ANI record). The Commission is aware that, in many instances, vendors are not allowing consumers the opportunity to rebut this presumption. If a consumer provides sufficient evidence to rebut the presumption that the provider's ANI records are valid, however, then the presumption must fall. The proposed Rule modifies the footnote to make this clear.

Additionally, the footnote lists a specific method by which consumers may rebut the presumption of ANI validity: a declaration signed under penalty of perjury.[279] For example, if a consumer disputes a charge for a

[276] This situation should be compared to the protections provided under the Fair Debt Collection Practices Act (''FDCPA''), 15 U.S.C. 1692 *et seq.*, to a consumer who disputes a debt. Under the FDCPA, once the consumer notifies the debt collector that the debt is disputed, the debt collector must cease attempting to collect the debt until the debt collector obtains verification of the debt and sends a copy of the verification to the consumer. 15 U.S.C. 1692g.

[277] In these cases, the Commission made clear that it is deceptive and unfair to misrepresent that a consumer is obligated to pay for services, when that consumer did not access or purchase those services or was not a party to any purported agreement to purchase such services. *Hold Billing Services; International Telemedia Associates;* and *Interactive Audiotext Services*.

[278] The proposed Rule should ensure that such verification is possible. Proposed Section 308.20(c)(3)(i) requires the billing entity that handled the initial dispute to ''notify the appropriate providing carrier, vendor, or service bureau as applicable'' of a decision to forgive a disputed charge.

[279] This proposed provision is comparable to the steps a card issuer may take in the credit card context while conducting a reasonable investigation of a charge disputed on the basis of unauthorized use. 12 CFR Part 226, Supplement 1, section 12(b)–(3).

telephone-billed purchase on the ground that a particular phone call was not made from his or her phone, and the billing entity submits ANI records showing that a call was placed to the disputed number from the consumer's telephone number on the date and at the time indicated, a rebuttable presumption is raised that the charge is valid. However, the consumer can rebut this presumption by submitting a declaration, signed under penalty of perjury, that the documentary information upon which the bill was based is not correct and that the call could not have been made from the consumer's phone. Although this declaration can rebut the presumption of validity of ANI, it may not be enough to prevent collection activity in the face of more reliable evidence—*i.e.*, evidence showing more than merely ''the date on, and the place to, which the goods or services were transmitted or delivered.'' If the vendor or service bureau can show additional reliable evidence of delivery of the goods or services (such as a true and accurate tape recording, a signature, or other evidence that the goods or services were actually delivered), then, depending on the facts of a given transaction, a billing entity's investigation might still conclude that no billing error occurred.

The revised footnote further adds that the Commission can rebut the presumption with evidence indicating that, in numerous instances, the goods or services were not actually transmitted or delivered. It is not necessary to show that each and every consumer did not receive the goods or services, but only that numerous consumers did not receive the goods or services. For example, the Commission may introduce evidence showing that, while ANI records may indicate that calls were placed from the phones of particular consumers, in fact, the calls could not have been placed from those phones because the phones had a 900-number block in place, or there was other compelling evidence that no one could have made the call from within the home.

New time limits within which the investigation must be conducted; modification of other time limits established in the original Rule. One of the major complaints from industry members has been the length of time it takes to learn from the LECs about chargebacks or refunds the LECs have granted.[280] TSIA maintained that businesses had been destroyed when ''chargebacks came back that were a year, year and a half, and two years old.'' [281]

In order to address this problem, the Commission has proposed several modifications to Section 308.7 of the original Rule (now proposed Section 308.20). First, in proposed Section 308.20(c)(3), the time period within which a billing entity must conduct an investigation and either sustain or forgive a charge has been shortened from 90 to 60 days. In the event that the LEC forgives the charge or is otherwise unable to collect it, the shorter time frame will enable vendors to receive more expeditiously the information they need to initiate collection on their own.

Second, in proposed Section 308.20(c)(3)(i), the Commission has added a new requirement that, within 30 days of determining not to sustain a charge, a billing entity (usually a LEC) must provide sufficient information to the vendor or service bureau to allow it to identify the customer account at issue. This provision addresses industry's complaint that when the LECs forgive charges, they do not provide the vendors and service bureaus with the timely information needed to initiate collection on their own.[282] This provision should be viewed in conjunction with the new language requiring that a ''reasonable investigation'' be conducted before a vendor or its agent can engage in secondary collection activities to collect an alleged debt. The Commission believes that consumers are entitled to an investigation and supporting evidence that a debt is valid. However, the Commission also believes that consumers must be held accountable for the valid debts they incur and that industry is entitled to attempt to collect such debts. Given this balance of interests, it seems fair to allow vendors and service bureaus the information they need to attempt their own collections, and to require that information be provided in a timely manner.

Finally, several commenters asked that the Commission take steps to remedy the current LEC practice of writing off a charge after a lengthy period of attempting to collect.[283] In some instances, a consumer may fail to provide notice of a billing error that the LEC can investigate; instead, the consumer, without explanation, simply withholds from his payment the amount of a particular charge. In the absence of a formal notice of a billing error from the consumer explaining the reason for non-payment, the LEC has no way to know whether payment is withheld because of a disputed charge, and thus continues to attempt to collect the debt. Apparently, after a lengthy period of time, the LEC may determine the debt to be uncollectible and charge the debt back to the vendor. In these instances, the vendor generally learns of the disputed charge only after it is too late to undertake its own collection effort. To remedy this situation, the Commission has proposed adding a new subsection 308.20(n)(4) requiring that a billing entity (usually the LEC) shall notify the vendor or service bureau of an unpaid charge no later than 120 days after the original bill was sent to the consumer, if a consumer has neither paid such charges nor initiated a billing error review within the allotted 60-day time period. The billing entity must provide the vendor or service bureau with notice of the failure to pay, the amount of the unpaid charge, and sufficient information to identify the customer's account.

Revision of the Notice of Billing Error Rights to simplify the language and to clarify the meaning of the 60-day time limit by which the consumer must give notice. A number of commenters asked the Commission to revise the wording of the Notice of Billing Error Rights set out in Section 308.7(n) of the original Rule to enhance consumers' understanding that they have the obligation to pay for any valid pay-per-call charges and that failing to pay valid charges may subject them to debt collection efforts.[284] Some commenters maintained that consumers have abused their rights under the Rule to dispute billing errors and have refused to pay valid charges.[285]

The Commission agrees that it is important for consumers to understand both their rights and their obligations when they are billed for pay-per-call services or telephone-billed purchases. In order to further consumers' understanding of their rights and obligations, the proposed Rule simplifies the requirements regarding the notice of customers' billing rights. Under Section 308.20(m) of the proposed Rule, such a notice of billing rights must be provided with each billing statement that contains charges for a pay-per-call service or for a telephone-billed purchase; the annual

[280] *See, e.g.*, GORDON at 2; ISA at 10–12, 17–18; PMAA at 13; TPI at 5, 6; TSIA at 10–12; Tr. at 20, 25, 43–44, 68, 224–27.

[281] Tr. at 25.

[282] PILGRIM—FCC comment at 6–7, 9; PILGRIM—FCC Reply comments at 20.

[283] GORDON at 2; TSIA at 10–11; Tr. at 25, 43–44, 63–64.

[284] GORDON at 2–3; ISA at 6–9; PMAA at 3, 13; TSIA at 12–13; Tr. at 27–28, 68, 126–45.

[285] AT&T at 20–21; Tr. at 8, 25–26, 128.

notice option is no longer permitted.[286] If each billing statement that contains charges for a telephone-billed purchase also contains a notice of billing error rights, customers will be assured of timely notice of their rights and obligations in the event that a billing dispute arises. The proposed Rule retains the requirements that the notice set forth the procedure the customer must follow to notify the billing entity of a billing error, that the notice must disclose the customer's right to withhold payment of any disputed amount, and that any action to collect that amount will be suspended pending the billing review. The proposed Rule would add the disclosure that, in order to be guaranteed the protections under the dispute resolution provisions of the Rule, the consumer must give notice of a billing error dispute within 60 days.

Two commenters suggested language for the notice that would advise the consumer of the consequences that may occur if the consumer fails to pay a valid charge, even if the charge was forgiven by the LEC.[287] In the original Rule, the Commission declined to mandate specific language for the Notice of Billing Error Rights in order to give the billing entity the flexibility to fashion its own notice and to arrange and disclose the material information in a more cost-effective manner.[288] The Commission believes this approach is still appropriate. As the Commission explained in the Statement of Basis and Purpose to the original Rule, the Rule does not preclude a billing entity from including additional information on the notice, as long as it does not confuse or mislead the consumer or obscure or detract from the required disclosures, which must appear separately and above any other information.[289] The Commission still believes that vendors, service bureaus, and billing entities are in the best position to negotiate among themselves to provide any additional information to consumers regarding their liability for telephone-billed purchases. Several workshop participants agreed that the Rule need not be changed to accommodate specific language, and that it would be sufficient to provide additional sample language in the Commission's Compliance Guides.[290]

Direct liability under the dispute resolution requirement extended to service bureaus in addition to vendors, providing carriers, and billing entities. Under the original Rule, billing entities, providing carriers, and vendors are all directly liable for compliance with the requirements of Section 308.20. Where appropriate, the proposed Rule adds 'service bureau' to the parties who will be held directly liable for compliance with the provisions of this section. Thus, under the proposed Rule, service bureaus are directly liable for compliance with the following provisions of Section 308.20: 308.20(f)—Limitation on collection action; 308.20(g)—Prohibition on charges for initiating billing review; and 308.20(h)(1)—Prohibition on adverse credit reports.

The proposed Rule extends direct liability to service bureaus in these instances because the service bureau often is the entity handling the dispute resolution process, as well as the party with whom the billing entity has a contract. Additionally, as aggregators or as entities developing ''turn-key'' pay-per-call service operations, service bureaus are often in the best position to make sure that the services are offered and provided in a non-deceptive manner that complies with the Rule.

Clarification of the forfeiture of right to collect. Section 308.7(j) of the original Rule provided that any billing entity, vendor, or service bureau that failed to comply with the requirements of the dispute resolution section would forfeit the right to collect any amount the customer has disputed in a notice of a billing error. Proposed Section 308.20(i) adds language to clarify that this forfeiture relates only to charges that are legitimate charges that the entity would otherwise be entitled to collect. If an entity does not comply with proposed Section 308.20, it must forgive even legitimate charges. However, this provision does not limit liability to provide refunds or credits for charges that are in error, nor does it affect liability for civil penalties for violations of proposed Section 308.20, or for violations of other provisions of the Rule.

Requirement for identifying information to be disclosed at time of billing. Section 308.20(b) of the proposed Rule clarifies and expands the requirements in current section 308.7(c) to disclose certain identifying information to the customer on the billing statement or in other material accompanying the billing statement. In addition to disclosing the method by which the customer can provide a billing error notice (required by the current Rule), under the revised provision, the billing statement must also disclose the name of the billing entity designated to receive and respond to billing error notices and how to contact that entity. For example, if the customer must submit written notice of a billing error, the disclosure must include the mailing address to which the notice should be sent; if the customer may submit notice orally, the disclosure must contain a local or toll-free number that is readily available for customers to call in the event of a billing error. The billing entity and vendor may agree to a single telephone number to satisfy both the requirements of this section as well as the requirements of proposed Section 308.18(d).

This section is intended to ensure that consumers are able to reach a responsible party when they submit a billing error notice, and has been included to address the problems consumers reportedly encounter when they attempt to assert a billing error. Consumer groups at the workshop described the frustration consumers often feel when they attempt to inquire about charges on their telephone bills. Instead of reaching a helpful customer service representative, they often find themselves navigating a maze to find the entity to whom the billing error should be reported. Consumers reportedly get passed from one entity to another, are placed on hold for long periods of time, or the telephone numbers they are told to call are disconnected, perpetually busy, or are not answered at all.[291] Under the proposed Rule, these types of practices will constitute a violation of Section 308.20(b).

Clarification that all billing entities must comply with the Rule's requirements. Where a telephone-billed purchase involves more than one billing entity, section 308.20(n)(1) of the proposed Rule requires them to agree which one of them will be responsible for receiving and responding to billing errors. Furthermore, proposed Section 308.20(b) requires that this designation be clearly and conspicuously disclosed on the billing statement. This will ensure that unscrupulous billing entities will not pass responsibility from one to another, leaving a consumer without an effective means of exercising his or her dispute resolution rights. Furthermore, the proposed Rule modifies the language of Section 308.7(o)(2) of the original Rule, which allowed multiple billing entities to agree among themselves which billing entity was responsible for compliance with the Rule. The Commission believes that all billing entities are under an obligation

[286] The Commission is not aware of many instances where the annual statement format was being used.

[287] ISA at 7–9; GORDON at 2–3.

[288] 58 FR 42364, 42397 (August 9, 1993).

[289] 58 FR 42364, 42398 (August 9, 1993).

[290] Tr. at 141–42.

[291] ISA at A4; NAAG at 12–13; Tr. at 114–16, 173–74, 262–65.

to comply with the proposed Rule's requirements, regardless of which entity is designated to give disclosures and respond to billing error notices. Thus, each billing entity that attempts to sustain a charge for a telephone-billed purchase must comply with the requirement that it conduct a reasonable investigation and provide proof of the debt before collection attempts are made.

Deceptive statements to billing entities by vendors, service bureaus, and providing carriers. Section 308.20(p) of the proposed Rule specifies that it is a deceptive act or practice for any vendor, service bureau, or providing carrier to provide false or misleading information to a billing entity conducting an investigation of a disputed telephone-billed purchase charge. One of the cornerstones of the Rule is that once a consumer disputes the validity of a charge, a billing entity cannot attempt to collect the disputed charge until an investigation of the validity of the charge has been conducted and the consumer has been provided documentary evidence of the charge, and an explanation of why the investigating billing entity has determined that no billing error has occurred. The proposed Rule provides that, in conducting the investigation, the billing entity should contact (where appropriate) the vendor, service bureau, or providing carrier. False or misleading statements to the investigating billing entity by the vendor, service bureau, or providing carrier would undermine the investigation of a disputed charge, and would be likely to mislead reasonable consumers into paying money that is not actually owed. The proposed Rule will prohibit such false or misleading statements.

Subpart D—General Provisions

Section 308.22 Actions by States

TDDRA grants the States authority to enforce the rules that the Commission promulgates pursuant to 15 U.S.C. 5711. The original Rule did not contain a provision that detailed the procedures the States should follow in bringing actions under the Rule. The Commission's enforcement experience with its Telemarketing Sales Rule, 16 CFR Part 310, indicates that such procedures are helpful in promoting consistency and in coordinating law enforcement activity in order to maximize the impact of such actions. Therefore, the proposed Rule adds Section 308.22, which outlines the procedures that State law enforcement officials should use in bringing actions under the Rule. The language in Section 308.22 tracks the language and procedures set out in Section 310.7 of the Telemarketing Sales Rule.

Section 308.22 also closely tracks the statutory language of TDDRA which provided for such State action.[292] Since Section 5712 of TDDRA gives States the authority to enforce only the rules promulgated under 15 U.S.C. 5711 (*i.e.*, Title II of TDDRA), the proposed Rule delineates those provisions that are not enforceable by the States because they have been proposed under the rulemaking authority granted in other sections of TDDRA. Thus, it specifies that States can bring actions only where a violation of the Rule relates to the provision of pay-per-call services, since this is the subject matter of the Commission's rulemaking authority under Title II of TDDRA.[293] In addition, proposed Section 308.22(a) specifies that States may not enforce Section 308.20, because that section is promulgated under the rulemaking authority granted under Title III of TDDRA.[294]

Rulemaking Review Requirement

The original Rule required that a rule review proceeding be commenced within four years of the effective date of the Rule. The proposed Rule does not have an equivalent provision. The Commission has a policy of reviewing all of its rules and guides on a periodic basis to ensure that they continue to meet the goals and provide the protections that were intended when they were promulgated. This periodic review also examines the economic costs and benefits of the particular rule or guide under review. The Commission believes that this periodic review should be sufficient for any final Rule, and that it is not necessary to include a specific deadline within the text of the Rule.

Section D. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning the proposed changes to the Commission's 900-Number Rule. The Commission invites written comments to assist it in ascertaining the facts necessary to reach a determination as to whether to adopt as final the proposed changes to the Rule. Written comments must be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, on or before January 8, 1999. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Rules of Practice, on normal business days between the hours of 9:00 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580. Comments submitted in electronic form will be made available on the Commission's web site at www.ftc.gov.

Section E. Public Workshop

The FTC staff will conduct a public workshop to discuss the written comments received in response to the **Federal Register** notice. The purpose of the workshop is to afford Commission staff and interested parties a further opportunity to discuss issues raised by the proposal and in the comments, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The workshop is not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the comments. Commission staff will consider the views and suggestions made during the workshop, in conjunction with the written comments, in formulating its final recommendation to the Commission regarding amendment of the 900–Number Rule.

Commission staff will select a limited number of parties from among those who submit written comments, to represent the significant interests affected by the issues raised in the notice. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the workshop will be open to the general public. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following interests: advertisers, billing entities, vendors, service bureaus, local exchange carriers, long-distance carriers, consumer groups, federal and State law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties who represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the comment period.

[292] 15 U.S.C. 5712.

[293] 15 U.S.C. 5711.

[294] 15 U.S.C. 5721—5724.

2. During the comment period the party notifies Commission staff of its interest in participating in the workshop.

3. The party's participation would promote a balance of interests being represented at the workshop.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in this notice.

5. The party has expertise in activities affected by the issues raised in this notice.

6. The number of parties selected will not be so large as to inhibit effective discussion among them.

The workshop will be held at the Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, on February 25 and 26, 1999. Prior to the workshop, parties selected will be provided with copies of the comments from all other participants selected to participate in the workshop.

Section F. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications or summaries of any oral communications relating to such oral communications.

Section G. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3510–3520, the FTC has current approval from the Office of Management and Budget (OMB) for 3,241,200 total burden hours associated with certain reporting and disclosure requirements under the 900–Number Rule (control number 3084–0102, which expires on December 31, 1999). The Commission is seeking to extend this approval for the existing Rule requirements and to obtain such approval for certain additional or amended disclosure requirements being proposed by the Commission.

The FTC has previously estimated that approximately 25 common carriers routinely maintain certain business records and make them available to the Commission under the Rule, at an average annual burden of 5 hours per submission, for a total reporting burden of 125 hours. Based on a 12 percent estimated growth of the industry since 1995 (when the last burden was calculated), the Commission estimates that the current burden would be 140 hours. The Commission is not proposing to change this reporting requirement in a manner that would increase the compliance burden.

The Rule further requires that advertisements for pay-per-call services contain certain disclosures mandated by TDDRA as to the cost of the telephone call. The Commission has previously estimated that these requirements apply to approximately 20,000 vendors, who must make additional disclosures if the advertisement is directed to individuals under 18 (50 percent of the ads) or relates to pay-per-call services for sweepstakes or information on federal programs (30 percent of the ads). The Commission has estimated that each disclosure mandated by the Rule, whether cost or otherwise, requires approximately one hour of compliance time. Based on three advertisements per vendor, or a total of 60,000 ads, 80 percent of which would require a disclosure in addition to the cost disclosure, the Commission has estimated that approximately 110,000 burden hours are needed for vendors to comply with these requirements. Based on the estimated growth of the industry, the Commission now calculates the current burden to be 123,000 hours. The Commission is proposing to amend the advertising disclosure section of the Rule (proposed Section 308.4(a)(1)(iii)(B)) to require that advertisements for pay-per-call services billed on a variable time rate basis disclose the cost of each portion of the call. Assuming that 20 percent of the 67,200 (adjusted from 60,000 for 12 percent growth) pay-per-call services will be required to make the new disclosure, the Commission estimates that the additional burden associated with the proposed change will be 12,240 hours, assuming one hour for each disclosure. The Commission is also proposing that a new disclosure (i.e., a signal indicating the end of free time typically used to market pay-per-call services) be included in proposed Rule Section 308.7(b). Based on an assumption that 25 percent of the 67,200 pay-per-call services will be required to include the new signal, the additional burden associated with this proposed change is calculated to be 16,800 hours, again assuming one new burden hour for each disclosure.

In addition, the Commission has previously estimated that approximately 60,000 pay-per-call services are required to make disclosures in the preamble to the pay-per-call service, at an average burden of 10 hours for each preamble, resulting in a total burden estimate of 600,000 hours. Based on the estimated growth of the industry, the Commission now calculates the current burden to be 672,000 hours. The Commission's proposal to amend the preamble requirements of the Rule (proposed Section 308.9(a)(2)(iii)(B)) would further require the preamble to disclose the cost of each portion of a telephone call to a pay-per-call service billed on a variable time rate basis. Assuming that 30 percent of the 67,200 pay-per-call services would be required to make the new disclosure in the preamble, the Commission estimates that the new burden associated with the proposed change would be 20,160 hours, if each new disclosure requires one additional hour of compliance.

The Commission's Rule also requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, the Commission estimated that the burden to comply would be minimal. At most, the only burden on the vendor may be to conduct spot checks of telephone bills to ensure that the charges are displayed in the manner required by the Rule. Staff estimated that only 10 percent of the 20,000 vendors would monitor billing statements in this manner and that it would take 12 hours each year to conduct such checks, for a total of 24,000 burden hours. Based on the estimated growth of the industry, the Commission calculates the current burden to be 26,880 hours. The Commission is not proposing to amend

this disclosure requirement section in a way that will increase the burden of compliance.

The Commission's Rule imposes certain disclosure requirements relating to billing and dispute resolution. In particular, the Rule requires billing entities to notify pay-per-call service customers in writing of their rights and obligations with respect to pay-per-call service charges. The FTC has previously estimated that it would take 7,000 hours for billing entities to provide such notice to customers, based on approximately 1,400 billing entities spending 5 hours to review, revise, and provide the disclosures annually. Based on the estimated growth of the industry, the Commission estimates the current burden to be 7,840 hours. Proposed Rule Section 308.18(m)(1), if adopted, would make this requirement mandatory with each billing notice, rather than annually. There should be no additional burden hours associated with this proposed change because most, if not all, entities already disclose customer rights and obligations in each billing statement that contains such charges. The Commission is also proposing to amend paragraphs (i) and (j) of proposed Section 308.2 of the Rule to require certain disclosures to customers regarding the personal identification numbers requested by and issued to such customers, and the material terms and conditions governing the use of such numbers. Assuming that 50,000 different audiotext services are provided via toll-free numbers and will be required to comply with these proposed new disclosure requirements, the Commission estimates that the additional burden will be 50,000 hours, based on 1 hour per service.

The Commission has separately estimated that the compliance burden associated with the existing dispute resolution requirements of the Rule is, on average, about one hour per each billing error, and that approximately 5 percent of the estimated 50,000,000 calls made to pay-per-call services each year would involve such a billing error, for a total burden of 2,500,000 hours. Based on the estimated growth of the industry, the Commission calculates the current burden to be 2,800,000 hours. The Commission proposes to expand the disclosure requirements that apply to billing entities in the resolution of billing disputes, as set forth in the proposed amendments to proposed Sections 308.18(n)(2) (notice to customer when attempting to collect charge that was forgiven by another billing entity), and 308.18(n)(4) (notice to vendor or service bureau of certain customer information by the billing entity designated to receive and respond to alleged billing errors). Assuming again that 5 percent of the 56,000,000 calls (adjusted for 12 percent growth) require billing entities to respond to billing errors, the Commission estimates that the new burden associated with these two new disclosure requirements will be 1,400,000 hours, based on an additional ½ hour of compliance time required for both disclosures.

Based on the above figures, the total PRA burden under the existing requirements of the Rule was estimated to be approximately 3,241,125 hours, comprising 125 hours for reporting requirements, with the remainder attributable to requirements for disclosures in advertising (110,000), preamble (600,000), billing statement disclosures (24,000), and billing dispute resolution (2,500,000 and 7,000). Based on estimated growth of the industry, the Commission calculates the current burden to be 3,630,060 hours. The Commission calculates that the new burden associated with all of the proposed changes described above will be 1,499,200 additional burden hours for industry to comply with the proposed Rule. Of course, the Commission seeks comment to determine whether its calculation of burden hours is accurate.

Section H. Regulatory Flexibility Act

The provision of the Regulatory Flexibility Act requiring an initial regulatory flexibility analysis (5 U.S.C. 603) does not apply because it is believed that these Rule amendments, if adopted, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). This notice also serves as certification to the Small Business Administration of that determination.

It appears that some vendors may be small entities, but the Commission, on the basis of information currently available to its staff, does not believe the number of such entities is clearly substantial when compared to the number and size of other businesses covered by the Rule (e.g., service bureaus, common carriers, and billing entities). Furthermore, to the extent that the Rule's requirements are expressly mandated by TDDRA, the Commission has no discretion to adopt alternative provisions that would reduce any significant impact that such requirements might have on small entities, as the Commission noted when the Rule was originally promulgated.

Nonetheless, to ensure that no significant economic impact on a substantial number of small entities is overlooked, the Commission hereby requests public comment on the effect of the proposed Rule amendments on costs, profitability, competitiveness, and employment on small entities. After considering such comments, if any, the Commission will determine whether preparation of a final regulatory flexibility analysis (pursuant to 5 U.S.C. 604) is required.

Section I. Questions for Comment on the Proposed Rule

The Commission seeks comment on various aspects of the proposed Rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

General Questions

Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on each different proposed change to the Rule. Regarding each proposed modification commented on, please include answers to the following questions:

(a) What is the effect (including any benefits and costs), if any, on consumers?

(b) What is the impact (including any benefits and costs), if any, on individual firms that must comply with the Rule?

(c) What is the impact (including any benefits and costs), if any, on industry?

(d) What changes, if any, should be made to the proposed Rule to minimize any cost to industry or consumers?

(e) How would those changes affect the benefits that might be provided by the proposed Rule to consumers or industry?

(f) How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

Questions on Proposed Specific Changes

In response to each of the following questions, please provide: (1) detailed comment, including data, statistics, consumer complaint information and other evidence, regarding the problem referred to in the question; (2) comment as to whether the proposed changes do or do not provide an adequate solution to the problems they were intended to address; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on industry.

1. Unauthorized charges. Viewed together, do the new billing error and

express authorization sections (proposed 308.2(b) and 308.17) of the proposed Rule adequately address the problem of consumers being charged for unauthorized telephone-billed purchases? Is the ''knew or should have known'' standard for vendors, service bureaus, and billing entities sufficient to address the deceptive practices that the Rule intends to prevent?

2. PIN number. Does the requirement that a PIN, as defined in proposed 308.2(i), be used in connection with a presubscription agreement adequately address the problem of controlling access to audiotext services provided through toll-free numbers?

3. Presubscription agreement. Do the proposed changes to the definition of ''presubscription agreement''(proposed 308.2(j)), together with the provision relating to prohibitions concerning toll-free numbers (proposed 308.13), adequately address the problem of consumers receiving charges on their telephone bills under presubscription agreements to which they were not a party?

4. Service bureau. The proposed definition of ''service bureau'' (proposed 308.2(n)) is designed to include billing aggregators, and to prevent an entity from escaping liability under the Rule by hiding behind ''common carrier'' status. Does the revised definition include the appropriate entities? Are there other entities that should be included?

5. Pay-per-call service. Does the proposed definition of ''pay-per-call service''(proposed 308.2(g)) rely on the appropriate criteria to identify a pay-per-call service? Are the exemptions to the proposed definition of pay-per-call service appropriate? Are there additional exemptions that should be included?

6. *De minimis* threshold for pay-per-call services. Does the proposed $.05 per minute or $.50 per call *de minimis* threshold strike the appropriate balance between services that should be considered pay-per-call and services that should not be considered pay-per-call? Should the proposed threshold be higher or lower? Will some vendors be required to undertake additional record keeping in order to demonstrate their exemption? Is there a more efficient alternative to the de minimis approach?

7. Rebuttable presumption of payment to a vendor. In the absence of direct evidence of payment, is a rebuttable presumption the best method of determining whether remuneration has been provided to a vendor? If so, has the Commission described the appropriate circumstances under which it should presume that payment has been made to a vendor? If not, what is a more appropriate method of determining whether remuneration has been provided to a vendor? Are there other circumstances under which payment should be presumed?

8. Misrepresentation of cost. Does the proposed provision governing misrepresentation of cost (proposed 308.6) adequately address the problem of consumers being misled regarding the cost of services?

9. Beepers and pagers. Is there any non-deceptive way in which beepers or pagers are used or could be used to solicit calls to a pay-per-call service? Is the restriction in proposed 308.7 appropriate? Is it possible to make adequate disclosures in beeper or pager solicitations? Would it be appropriate to prohibit these types of solicitations altogether?

10. Nominal cost calls. Do the data suggest that $3.00 is an appropriate threshold for designation of ''nominal cost calls'' (proposed 308.9) for which no preamble is necessary? If not, what ''nominal cost'' threshold does the data support? Should the ''nominal cost'' figure be adjusted for inflation?

11. Fractional minute billing. Under what circumstances are telecommunications calls or services currently billed in increments of less than one minute? In what increments are these calls or services billed? What billing increments are technologically feasible? What costs, if any, would be associated with requiring pay-per-call services to bill in increments of less than one minute?

12. Toll charges. Does the proposal to prohibit audiotext services from being billed as toll charges (proposed 308.12) adequately address the problem of consumers being charged for audiotext services in a manner that does not provide them with all of the TDDRA-mandated protections? Are there other, less restrictive, means to address the problem?

13. Express authorization. What costs would be associated with obtaining express authorization from consumers for non-blockable telephone-billed purchases (proposed 308.17)? Are there methods of obtaining express authorization that would impose lower costs than those methods described in the Notice? Is the proposed Rule sufficiently flexible to accommodate technological developments that may make it easier to obtain express authorization?

14. Billing statement disclosures. Do the modifications regarding the disclosures on billing statements (proposed 308.18) adequately address the problem of consumers being unable to reach the entity whose telephone number is listed on the phone bill for billing inquiries? Does the provision adequately address the problem that consumers often cannot reach the entity with the authority to provide refunds or credits?

15. Service bureau liability. What effect will the additional direct liability of service bureaus pursuant to proposed 308.17 and 308.20 have on industry? Will it increase the level of industry's accountability to consumers? What effect will it have on cramming?

16. Billing entity liability. What effect will the additional liability of billing entities pursuant to proposed 308.17 and 308.20 have on industry? Will it increase the level of industry's accountability to consumers? What effect will it have on cramming?

17. Information necessary to collect debts. Does the proposed Rule adequately address in proposed 308.20(n)(4) the need of vendors and service bureaus to obtain sufficient information from the LECs to continue collection activities against customers who refuse to pay valid charges?

18. Reporting times. If the period of time that LECs or other billing entities have to respond to a billing error notice is shortened from 90 to 60 days, what effect, if any, would this have on billing entities? Would this impose additional costs? Do the changes in the proposed 308.20 of the Rule that shorten the times by which the LEC must provide information to the vendor or service bureau sufficiently expedite the process so that vendors or service bureaus will be able to pursue collection of valid debts in a timely manner? Are these deadlines feasible?

19. Chargebacks. Are the proposed changes to the dispute resolution section the most cost effective and appropriate ways to deal with industry concerns regarding the chargeback process?

20. Reasonable investigation. Does the proposed Rule adequately address in proposed 308.20 the problem of consumers becoming the target for a collection action without ever receiving an explanation or evidence that the alleged debt is in fact valid?

21. Evidence of debt. What evidence (other than ANI information) is currently created or maintained that would show the delivery of telephone-billed purchases? If no such evidence is created or maintained, what would be the costs, if any, associated with creating and maintaining such evidence. What would be the benefits?

22. TDDRA blocking. What records do LECs maintain with respect to 900-number blocking? Do these records

indicate the date a consumer-requested block became effective? What measures do LECs take to ensure that blocks are not turned off by someone other than the subscriber? Do LECs make blocking information available to billing entities who are conducting ''reasonable investigations'' of disputed charges for telephone-billed purchases? Should LECs be required to do so? What would be the costs and benefits associated with such a requirement?

23. Applicability to third-party debt collectors. The proposed definition of ''billing entity'' does not include an exemption for third-party debt collectors attempting to collect debts for telephone-billed purchases. Should there be such an exemption? What, if any, costs or benefits would be associated with such an exemption?

Questions Relating to the Paperwork Reduction Act

The Commission solicits comments on the reporting and disclosure requirements above to the extent that they constitute ''collections of information'' within the meaning of the PRA. The Commission requests comments that will enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Section J. Proposed Rule

List of Subjects in 16 CFR Part 308

Advertising, 900 telephone numbers, Pay-per-call services, Telephone, Telephone-billed purchases, Toll-free numbers, Trade practices.

Accordingly, it is proposed that part 308 of title 16 of the Code of Federal Regulations, be revised to read as follows:

PART 308—RULE CONCERNING PAY-PER-CALL SERVICES AND OTHER TELEPHONE-BILLED PURCHASES

Subpart A—Scope and Definitions

Subpart B—Pay-Per-Call Services

Subpart C—Pay-Per Call Services and Other Telephone-Billed Purchases

Subpart D—General Provisions

Authority: Pub. L. 102–556, 106 Stat. 4181 (15 U.S.C. 5701, et seq.); Sec. 701, Pub. L. 104–104, 110 Stat. 56 (1996).

Subpart A—Scope and Definitions

§ 308.1 Scope of regulations in this part.

This Rule implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, in relevant part at 15 U.S.C. 5711–14, 5721–24, as amended by the Telecommunications Act of 1996, Sec. 701, Pub. L. 104–104, 110 Stat. 56 (1996).

§ 308.2 Definitions.

(a) Billing entity means any person who transmits a billing statement or any other statement of debt to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(b) Billing error means any of the following:

(1) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(2) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(3) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or was not provided to the customer in accordance with the stated terms of the transaction.

(4) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800, 888, 877, or other toll-free telephone number.

(5) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(6) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(7) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty (20) days before the end of the billing cycle for which the statement was required.

(8) A reflection on a billing statement of a telephone-billed purchase identified in a manner that violates the requirements of § 308.18.

(9) A reflection on a customer's billing statement of a charge incurred pursuant to a purported presubscription agreement that does not meet the requirements of § 308.2(j).

(10) A reflection on a customer's billing statement of a telephone-billed purchase not blockable pursuant to 47 U.S.C. 228(c) that was not expressly authorized by that customer.

(11) A reflection on a billing statement of a charge that is inconsistent with any blocking option chosen by a customer pursuant to 47 U.S.C. 228(c).

(c) Bona fide educational service means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(d) Commission means the Federal Trade Commission.

(e) Customer means any person who acquires or attempts to acquire goods or services through a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase.

(f) Pay-per-call purchase means any attempt to purchase, or any actual purchase of pay-per-call services.

(g) Pay-per-call service means:

(1) Any service covered by the definition of ''pay-per-call services'' provided in Section 228(i) of the

Communications Act of 1934, as amended;[1] or

(2) Any service that provides, or that is purported to provide, audio information or audio entertainment, including simultaneous voice conversation services, where the action of placing a call, receiving a call, or subsequent dialing, touch-tone entry, or comparable action of the caller results in a charge to a customer, and where all or a portion of such charge results in a payment, directly or indirectly, to the person who provides or purports to provide such information or entertainment services.

(3) Services meeting the criteria of § 308.2(g)(2) will not be considered pay-per-call services if:

(i) The provider of the audio information or an audio entertainment service demonstrates that the person from whom payment is being sought has entered into a presubscription agreement, meeting the requirements of § 308.2(j), to be charged for the information or service;

(ii) The provider of audio information or audio entertainment services demonstrates that, on average, the payment to the providers of audio information or audio entertainment services will not exceed $0.05 per minute or $0.50 per call for that particular service; or

(iii) The services provided are calls utilizing telecommunications services for the deaf, or are tariffed directory services provided by a common carrier or its affiliate;

(4) Nothing in this definition shall be construed to permit any conduct or practice otherwise precluded or limited by regulations of the Federal Communications Commission.

(h) Person means any individual, partnership, corporation, association or unincorporated association, government or governmental subdivision or agency, group, or other entity.

(i) Personal identification number means a number or code unique to the individual, that is not valid unless it:

(1) Is requested by a consumer;

(2) Is provided exclusively to the consumer who will be billed for services provided pursuant to that presubscription agreement; and

(3) Has been delivered, in writing, to the consumer who will be billed for the agreement, simultaneously with a clear and conspicuous disclosure of all material terms and conditions of the presubscription agreement, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service.

(j)(1) Presubscription agreement means a contractual agreement to purchase goods or services, including audio information or audio entertainment services, in which:

(i) The service provider clearly and conspicuously discloses to the consumer who will be billed for the service, all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer who will be billed for the service of any future rate changes;

(iii) The consumer who will be billed for the service agrees to utilize the service on the terms and conditions disclosed by the service provider; and (iv) The service provider requires the use of a valid personal identification number to prevent unauthorized charges by persons other than the person who will be billed for the service.

(2) Disclosure of a credit card or charge card number, along with authorization to bill that number, made during the course of a call to purchase goods or services, including audio information or audio entertainment services, shall constitute a presubscription agreement if the credit or charge card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended, and if the credit or charge card is the sole method used to pay for the charge.

(k) Program-length commercial means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(l) Providing carrier means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(m) Reasonably understandable volume means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(n) Service bureau means:

(1) Any person, including a common carrier, who provides one or more of the following services to vendors: voice storage, voice processing, call processing, billing aggregation, call statistics (call and minute counts), call revenue arrangements (including revenue-sharing arrangements with common carriers), or pre-packaged pay-per-call investment opportunities; or

(2) Any person, other than a common carrier, who provides access to telephone service to vendors of pay-per-call services.

(o) Slow and deliberate manner means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(p) Sweepstakes, including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

(q) Telephone-billed purchase means any pay-per-call purchase or any purchase that is either charged to a customer's telephone bill, or that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(1) A purchase pursuant to a presubscription agreement that meets the requirements of § 308.2(j);

(2) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(i) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

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[1] Section 228(i) of the Communications Act of 1934, as amended by Section 701 of the Telecommunications Act of 1996, states:

(1) The term pay-per-call services means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include calls utilizing telecommunications devices for the deaf, or directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(ii) Is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(3) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(r) Variable option rate basis refers to the rate structure of a pay-per-call service where the rate billed to the customer depends on the specific options chosen by the caller during the call.

(s) Variable time rate basis refers to the rate structure of a pay-per-call service where the rate billed to the customer changes during the call due to passage of time or due to other factors unrelated to specific options chosen by the caller.

(t) Vendor means any person who sells or offers to sell a pay-per-call service or who sells or offers to sell goods or services via a telephone-billed purchase. A person who provides only transmission services or only billing and collection services shall not be considered a vendor.

Subpart B—Pay-Per-Call Services

§ 308.3 General requirements for advertising disclosures.

The following requirements apply to disclosures required in advertisements under § 308.4:

(a) The disclosures shall be made in the same language as that principally used in the advertisement.

(b) Television, video, and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

(c) In print advertisements, disclosures shall be parallel with the base of the advertisement.

(d) Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(e) Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video, or print technique be used that is likely to detract significantly from the communication of the disclosures.

(f) In any program-length commercial, required disclosures shall be made at least three (3) times (unless more frequent disclosure is otherwise required) near the beginning, middle, and end of the commercial.

(g) In any advertising medium not specifically addressed in this Rule, all advertising disclosures must be clear and conspicuous and not avoidable by consumers acting reasonably.

§ 308.4 Advertising disclosures.

(a) Cost of the call. (1) The vendor shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the length of the program can be determined in advance, the advertisement shall also state the maximum charge that could be incurred if the caller listens to the complete program.

(iii)(A) If the call is billed on a variable option rate basis, the advertisement shall state, in accordance with § 308.4(a)(1)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(B) If the call is billed on a variable time rate basis, the advertisement shall state, in accordance with §§ 308.4(a)(1)(i) and (ii), the cost of each different portion of the call;

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) If the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with § 308.4(a)(1)(i), (ii), (iii), and (iv).

(2) For purposes of § 308.4(a), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3 and as follows:

(i) In a television or videotape advertisement, the video disclosure shall appear adjacent to each video presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the video disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent. In addition, the video disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number. In an advertisement in which the pay-per-call number is presented only in the audio portion, the cost of the call shall be delivered immediately following the first and last delivery of the pay-per-call number, except that in a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be placed adjacent to each presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(b) Sweepstakes; games of chance. (1) The vendor that advertises a prize or award, or a service or product, at no cost or for a reduced cost, to be awarded to the winner of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. Either the advertisement or the preamble required by § 308.9 for such service shall clearly and conspicuously disclose that no call to the pay-per-call service is required to participate, and shall also disclose the existence of a free alternative method of entry, and either instructions on how to enter, or a local or toll-free telephone number or address to which customers may call or write for information on how to enter the sweepstakes. Any description or characterization of the prize, award, service, or product that is being offered at no cost or reduced cost shall be truthful and accurate.

(2) For purposes of § 308.4(b) disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3 and as follows:

(i) In a television or videotape advertisement, the disclosures may be made in either the audio or video

portion of the advertisement. If the disclosures are made in the video portion, they shall appear on the screen in sufficient size and for sufficient time to allow customers to read and comprehend the disclosures.

(ii) In a print advertisement, the disclosures shall appear in a sufficient size and prominence and such location to be readily noticeable, readable, and comprehensible.

(c) Federal programs. (1) The vendor that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. Advertisements providing information on a Federal program shall include, but not be limited to, advertisements that contain a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement.

(2) For purposes of § 308.4(c), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3 and as follows:

(i) In a television or videotape advertisement, the disclosure may be made in either the audio or video portion of the advertisement. If the disclosure is made in the video portion, it shall appear on the screen in sufficient size and for sufficient time to allow customers to read and comprehend the disclosure. The disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(ii) In a print advertisement, the disclosure shall appear in a sufficient size and prominence and such location to be readily noticeable, readable, and comprehensible. The disclosure shall appear in the top one-third of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(d) Advertising to individuals under the age of 18. (1) The vendor shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) For purposes of § 308.4(d), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3 and as follows:

(i) In a television or videotape advertisement, each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number. The video disclosure shall appear on the screen for sufficient time to allow customers to read and comprehend the disclosure. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number.

(ii) In a print advertisement, each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

(3) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall include any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of individuals under 18, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of individuals under 18.

(4) For the purposes of this regulation, if competent and reliable audience composition or readership data do not demonstrate that more than 50% of the audience or readership is composed of individuals under 18, then the Commission shall consider the following criteria in determining whether an advertisement is directed primarily to individuals under 18:

(i) Whether the advertisement appears in publications directed primarily to individuals under 18, including, but not limited to, books, magazines, and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed primarily to individuals under 18, including, but not limited to, mid-afternoon weekday television shows;

(iii) Whether the advertisement is broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Whether the advertisement appears on a cable or broadcast television station directed primarily to individuals under 18;

(v) Whether the advertisement appears on the same videotape as a commercially-prepared videotape directed primarily to individuals under 18, or preceding a movie directed primarily to individuals under 18 shown in a movie theater; and

(vi) Whether the advertisement, regardless of when or where it appears, is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

§ 308.5 Advertising to children prohibited.

(a) The vendor shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(b) For the purposes of this regulation, advertisements directed to children under 12 shall include any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of children under 12, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of children under 12.

(c) For the purposes of this regulation, if competent and reliable audience composition or readership data do not demonstrate that more than 50% of the audience or readership is composed of children under 12, then the Commission shall consider the following criteria in determining whether an advertisement is directed to children under 12:

(1) Whether the advertisement appears in a publication directed to children under 12, including, but not limited to, books, magazines, and comic books;

(2) Whether the advertisement appears during or immediately adjacent to television programs directed to children under 12, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school programs;

(3) Whether the advertisement appears on a television station or channel directed to children under 12;

(4) Whether the advertisement is broadcast during or immediately adjacent to radio programs directed to children under 12, or broadcast on a

radio station directed to children under 12;

(5) Whether the advertisement appears on the same video as a commercially-prepared video directed to children under 12, or preceding a movie directed to children under 12 shown in a movie theater;

(6) Whether the advertisement or promotion appears on product packaging directed to children under 12; and

(7) Whether the advertisement, regardless of when or where it appears, is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

§ 308.6 Misrepresentation of cost prohibited.

(a) Deceptive representation of cost. It is a deceptive act or practice, and a violation of this Rule for any vendor to misrepresent the cost of a pay-per-call service.

(b) Signal indicating end of free time. If any portion of a telephone call to a pay-per-call service is offered as free, the vendor shall provide a clearly discernible signal or tone indicating the end of the free time, and shall inform the caller that to avoid charges, the call must be terminated within three (3) seconds of such signal or tone.

§ 308.7 Other advertising restrictions.

(a) Electronic tones in advertisements. The vendor is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(b) Telephone solicitations. The vendor shall ensure that any telephone message conveyed during an inbound or outbound call that solicits a person to place a call to a pay-per-call service discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.4(a)(1)(i) through (v).

(c) Solicitations via facsimile machine. The vendor shall ensure that any facsimile message that solicits calls to a pay-per-call service contains all the relevant disclosures required by this Rule, and that such disclosures are provided in the manner required for print advertisements in §§ 308.3 and 308.4(a)(2)(ii).

(d) Solicitations via beeper, pager, or similar device. The vendor shall ensure that any beeper or pager message that solicits calls to a pay-per-call service contains all the relevant disclosures required by this Rule, and that such disclosures are provided in the manner required for print advertisements in §§ 308.3 and 308.4(a)(2)(ii).

(e) Referral to toll-free telephone numbers. The vendor is prohibited from referring in advertisements to an 800, 888, or 877 number, or any other telephone number advertised as or widely understood to be toll-free, if that number is used in a manner that violates the prohibition concerning toll-free numbers set forth in § 308.13.

(f) Nothing in this section shall be construed to permit any conduct or practice otherwise precluded or limited by regulations of the Federal Communications Commission.

§ 308.8 Special rule for infrequent publications.

(a) The vendor that advertises a pay-per-call service in a publication that meets the requirements set forth in § 308.8(c) may include in such advertisement, in lieu of the cost disclosures required by § 308.4(a), a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge.

(b) The vendor that places an alphabetical listing in a publication that meets the requirements set forth in § 308.8(c) is not required to make any of the disclosures required by §§ 308.4(a) through (d) in the alphabetical listing, provided that such listing does not contain any information except the name, address, and telephone number of the vendor.

(c) The publication referred to in § 308.8(a) and (b) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established policy of not publishing specific prices in advertisements.

§ 308.9 Preamble message.

(a) The vendor shall include, in each pay-per-call message, an introductory disclosure message (''preamble'') in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the vendor and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program;

(iii)(A) If the call is billed on a variable option rate basis, the preamble shall state, in accordance with § 308.9(a)(2)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(B) If the call is billed on a variable time rate basis, the preamble shall state, in accordance with § 308.9(a)(2)(i) and (ii), the cost of each different portion of the call;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three (3) seconds after a clearly discernible signal or tone indicating the end of the preamble;

(4) Informs the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, or that uses a trade or brand name or any other term that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) No charge to caller for preamble message. The vendor is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to three (3) seconds after the signal or tone indicating the end of the preamble described in § 308.9(a). However, the three-second delay, and the message concerning such delay described in § 308.9(a)(3), is not required if the vendor offers the caller an affirmative means (such as pressing a key on a telephone keypad) of indicating a decision to incur the charges.

(c) Nominal cost calls. The preamble described in § 308.9(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is three (3) dollars or less.

(d) Data service calls. The preamble described in § 308.9(a) is not required when the entire call consists of the non-verbal transmission of information.

(e) Bypass mechanism. The vendor that offers to frequent callers or regular customers to such services the option of

activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.9(a), provided that any such bypass mechanism shall be disabled for a period of no less than thirty (30) days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

§ 308.10 Deceptive billing practices.

(a) Deceptive billing for pay-per-call services in violation of the Rule. It is a deceptive act or practice and a violation of this Rule for any vendor to collect or attempt to collect, directly or indirectly:

(1) Charges for pay-per-call services in excess of the amount described in the preamble for such pay-per-call services; or

(2) Charges for pay-per-call services that are provided in violation of this Rule.

(b) Deceptive billing for time-based charges after disconnection by the caller. It is a deceptive practice and a violation of this Rule for the vendor to fail to stop the assessment of time-based pay-per-call service charges immediately upon disconnection by the caller.

§ 308.11 Prohibition on services to children.

The vendor shall not direct pay-per-call services to children under the age of 12, unless such service is a bona fide educational service. The Commission shall consider the following criteria in determining whether a pay-per-call service is directed to children under 12:

(a) Whether the pay-per-call service is advertised in the manner set forth in § 308.5(b) and (c); and

(b) Whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like.

§ 308.12 Prohibition concerning toll charges.

The vendor shall not offer a pay-per call service that would result in any customer being assessed a charge for any local exchange telephone service or interexchange telephone service or any service that the Federal Communications Commission determines by rule—

(a) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(b) Is subject to billing dispute resolution procedures required by Federal or State statute or regulation.

§ 308.13 Prohibitions concerning toll-free numbers.

Any person is prohibited from using an 800, 888, or 877 number, or any other telephone number advertised as or widely understood to be toll-free in a manner that would result in:

(a) Any customer being assessed, by virtue of a caller completing the call, a charge for the call;

(b) The caller being connected to an access number for, or otherwise transferred to, a pay-per-call service;

(c) Any customer being charged for information or entertainment conveyed during the call, unless that person has entered into a presubscription agreement, meeting the requirements of § 308.2(j), to be charged for the information or entertainment; or

(d) Any person being charged for a call back for the provision of audio or data information services, entertainment services, simultaneous voice conversation services, or products.

§ 308.14 Monthly or other recurring charges.

The vendor is prohibited from providing a pay-per-call service that results in a monthly or other recurring charge, unless the vendor and the person to be billed for the service have entered into a presubscription agreement, meeting the requirements of § 308.2(j), that authorizes monthly or other recurring charges for that service.

§ 308.15 Refunds to customers.

The vendor shall be liable for refunds or credits to customers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call services that have been found to have violated any provision of this Rule or any other Federal rule or law.

§ 308.16 Service bureau liability.

A service bureau shall be liable for violations of the Rule by any vendor of pay-per-call services using its call processing facilities or other services where the service bureau knew or should have known of the violation.

Subpart C—Pay-Per-Call Services and Other Telephone-Billed Purchases

§ 308.17 Express authorization required.

Any telephone-billed purchase, other than a pay-per-call purchase that is blockable pursuant to 47 U.S.C. 228(c), requires the express authorization of the person to be billed for the purchase. It is a deceptive act or practice and a violation of this Rule for any vendor, service bureau, or billing entity to collect or attempt to collect, directly or indirectly, payment for such a telephone-billed purchase where the vendor, service bureau, or billing entity knew or should have known that the charge was not expressly authorized by the person from whom payment is being sought.

§ 308.18 Disclosure requirements for billing statements.

The vendor shall ensure that any billing statement for its charges shall:

(a) Display any charges for telephone-billed purchases in a portion of the customer's bill that is identified as not being related to local and long-distance telephone charges;

(b) For each telephone-billed purchase charge so displayed, identify the type of service or product and the amount of the charge;

(c) For each pay-per-call purchase charge so displayed, accurately specify the telephone number dialed by the caller, as well as the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(d) Display the local or toll-free telephone number where customers can readily obtain answers to their questions and information on their rights and obligations with regard to their telephone-billed purchases, and can obtain the name and mailing address of the vendor.

§ 308.19 Access to information.

Any common carrier that provides telecommunication services to any vendor or service bureau shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any vendor or service bureau.

§ 308.20 Dispute resolution procedures.

(a) Initiation of billing review. To be guaranteed the protections provided under § 308.20, a customer shall initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than sixty (60) days after the billing entity transmitted the first billing statement that contains the disputed charge. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. The customer's billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains an error, and the date and amount of such error; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains an error.

(b) Disclosure of method of providing notice; presumption if oral notice is permitted. A billing entity shall clearly and conspicuously [2] disclose on each billing statement or on other material accompanying the billing statement:

(1) The method (oral or written) by which the customer may provide a billing error notice in the manner set forth in § 308.20(a); [3]

(2) The name of the billing entity designated to receive and respond to billing errors;

(3) If written notice is required, the mailing address to which notice should be sent;

(4) If oral notice is permitted, a local or toll-free telephone number that is readily available for customers to submit a billing error notice. The billing entity and the vendor may, by agreement, select a single telephone number to satisfy the requirements of this section as well as § 308.18(d).

(c) Response to customer notice. A billing entity that receives notice of a billing error as described in § 308.20(a) shall:

(1) Send a written acknowledgment to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by § 308.20(c)(2) is taken within such 40-day period; and

(2)(i) Correct any billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor, service bureau, and providing carrier, as applicable, that are involved in the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to readily obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) Conduct a reasonable investigation (including, where appropriate, contacting the customer, vendor, service bureau, or providing carrier), after which it shall transmit a written explanation to the customer, setting forth the reasons why it has determined that no billing error occurred, make any appropriate adjustments to the customer's account, and provide copies of documentary evidence of the customer's indebtedness. The reasonable investigation and written explanation shall, in every case, address each potential billing error, and shall address with particularity the relevant facts asserted by the customer.[4]

(3) The action required by § 308.20(c)(2) shall be taken no later than sixty (60) days after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.20(c)(2), if the billing entity has determined that any disputed amount is in error, or has for other reasons determined not to sustain the disputed charge, the billing entity shall:

(i) Within thirty (30) days of such determination, notify the appropriate providing carrier, vendor, or service bureau as applicable, of its disposition of the customer's billing error and the reasons therefor, and provide sufficient information for the appropriate entity to identify the customer account at issue; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen. The billing entity shall allow the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract, or State law) to pay undisputed amounts.

(d) Withdrawal of billing error notice. A billing entity need not comply with the requirements of § 308.20(c) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

(e) Limitation on responsibility for billing error. After complying with the provisions of § 308.20(c), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(f) Customer's right to withhold disputed amount; limitation on collection action. Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and no billing entity, providing carrier, service bureau, or vendor may try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.20(c) and until the customer has received the written explanation and documentary evidence setting forth that no billing error has occurred, pursuant to § 308.20(c)(2)(ii) or § 308.20(n)(2). The billing entity, providing carrier, service bureau, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.20(c).

(g) Prohibition on charges for initiating billing review. A billing entity, providing carrier, service bureau, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

(h) Restrictions on credit reporting—(1) Adverse credit reports prohibited. Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, service bureau, vendor, or other agent may not report or threaten directly or indirectly

[2] The standard for ''clear and conspicuous'' as used in this Section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. See 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

[3] If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of 308.20(a).

[4] There shall be a rebuttable presumption that goods or services were actually transmitted or delivered to the extent that a vendor, service bureau, or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered. If a billing entity relies on this presumption in responding to a billing error notice, it shall provide the customer with the opportunity to rebut this presumption with a declaration signed under penalty of perjury. The billing entity shall not require this declaration to be notarized. In enforcing violations of this Rule, the Commission may rebut this presumption with evidence indicating that, in numerous instances, the goods or services were not actually transmitted or delivered.

to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.20(c) and allowed the customer as many days thereafter to make payment of any amount determined not to be in error, as prescribed by § 308.20(c)(3)(ii).

(2) Reports on continuing disputes. If a billing entity receives further notice from a customer within the time allowed for payment under § 308.20(h)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) Reporting of dispute resolutions required. A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.20(h)(2) to all persons to whom such matter was initially reported.

(i) Forfeiture of right to collect disputed amount. Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of § 308.20(b), (c), (f), (g), or (h) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.20(a)(2), to be in error, and any late charges or other related charges thereon, up to fifty (50) dollars per transaction. Nothing in this Section shall be construed to limit the liability of any billing entity, providing carrier, or other agent with respect to:

(1) Providing full refunds or credits for charges that are in error;

(2) Civil penalties for violations of § 308.20; or

(3) Liability for violations of any other provision of this Rule.

(j) Prompt notification of returns and crediting of refunds. When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund; or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(k) Right of customer to assert claims or defenses. Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(l) Retaliatory actions prohibited. A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this Section.

(m) Notice of billing error rights—(1) Billing notice. With each billing statement that contains charges for a telephone-billed purchase, a billing entity shall include a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose:

(i) The customer's right to withhold payment of any disputed amount;

(ii) That any action to collect any disputed amount will be suspended, pending completion of the billing review; and

(iii) That, to be guaranteed the protections provided under the Dispute Resolution Procedures of the Federal Trade Commission's Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases, a customer must initiate a billing review no later than sixty (60) days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase.

(2) General disclosure requirements. (i) The disclosures required by § 308.20(m)(1) shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.

(ii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by § 308.20(m), but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by § 308.20(m) shall appear separately and above any other disclosures except those required under 47 CFR 64.1510(a)(2)(i).

(n) Multiple billing entities. (1) If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need be given, and the billing entities shall agree among themselves which billing entity must receive and respond to billing error notices.

(2) If any billing entity has forgiven a disputed charge for a telephone-billed purchase, no other billing entity may attempt to collect such charge without first conducting the reasonable investigation and providing the customer with the written explanation and documentary evidence as specified by § 308.20(c)(2)(ii).

(3) If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.20(a), that billing entity shall either:

(i) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or

(ii) Transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.20(c) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(4) If a customer fails to pay for a telephone-billed purchase and fails to initiate a billing review within the sixty (60) days provided under § 308.20(a), the billing entity that transmitted the first billing statement containing the unpaid charge shall, no later no later than one hundred and twenty (120) days after such statement was transmitted, provide the vendor or service bureau with:

(i) Notice of the failure to pay;

(ii) The amount of the unpaid charge; and

(iii) Sufficient information to identify the customer's account.

(o) Multiple customers. If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

(p) Deceptive statements to billing entities by vendors, service bureaus, and providing carriers. It is a deceptive act or practice and a violation of this Rule for any vendor, service bureau, or providing carrier to provide false or misleading information to a billing entity conducting an investigation of a telephone-billed purchase charge under § 308.20(c) or § 308.20(n).

Subpart D—General Provisions

§ 308.21 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 308.22 Actions by States.

(a) As provided by 15 U.S.C. 5712, whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any section of this Rule relating to the provision of pay-per-call services, other than § 308.20, the State may bring a civil action on behalf of its residents in an appropriate district court to enjoin such pattern or practice, to enforce compliance with this Rule (except for § 308.20), or to obtain such further and other relief as the court may deem appropriate.

(b) Any attorney general or other officer of a State authorized by the State to bring an action under this Rule shall serve written notice on the Commission, if feasible, prior to its initiating such action. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State shall serve the Commission with the required notice immediately upon instituting its action.

(c) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(d) Nothing contained in this section shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) Whenever the Commission has instituted a civil action for violation of any provision of this Rule, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any provision as alleged in the Commission's complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ACRONYMS

Acronym	Commenter
ALLIANCE	Alliance of Young Families.
ALLIANCE–2	Supplemental comments (May 23, 1997) of Alliance of Young Families.
AARP	American Association of Retired Persons.
AMERITECH	Ameritech.
ATN	Atlantic Tele-Network.
ATN–2	Supplemental comments (September 3, 1997) of ATN.
AT&T	AT&T.
AT&T–2	Supplemental comments (August 8, 1997) of AT&T.
AUDIOTEX	Audiotex Connection Inc.
BELL	W. Marie Bell.
CINCINNATI	Cincinnati BBB.
CVS	Communications Venture Services, Inc.
CU	Consumers Union.
DMA	Direct Marketing Association.
FLORIDA	Florida Public Service Commission.
GORDON	Honorable Bart Gordon, U.S. House of Representatives.
GORDON–2	Supplemental comments (September 4, 1997) of Honorable Bart Gordon.
HFT	HFT and LO-AD Communications Corp.
UK	Independent Committee for the Supervision of Standards of Telephone Information Services.
ISA	Interactive Services Association.
ITA	International Telemedia Association.
MCI	MCI Telecommunications Corporation.
NAAG	National Association of Attorneys General.
NCL	National Consumers League.
PILGRIM	Pilgrim Telephone, Inc.
PMAA	Promotion Marketing Association of America.
SNET	Southern New England Telephone Company.
SW	Southwestern Bell and Pacific Bell.
TPI	Tele-Publishing, Inc.
TSIA	TeleServices Industry Association.
TSIA–2	Supplemental Comments (July 24, 1997) of TSIA.
TURJANICA	William L. Turjanica.
US WEST	U S West, Inc.

APPENDIX—LIST OF COMMENTERS AND ACRONYMS—Continued

Acronym	Commenter
WISCONSIN	Wisconsin Department of Justice.

[FR Doc. 98–28974 Filed 10–29–98; 845 am]
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Friday
October 30, 1998

Part IV

Department of Housing and Urban Development

24 CFR Part 3280
Manufactured Home Construction and Safety Standards; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR 4376–P–01]

RIN 2502–AH23

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to update many of the standards that are incorporated by reference therein. These reference standards, which are developed by voluntary consensus or industry groups, provide necessary technical standards for the FMHCSS. These proposed amendments would keep the FMHCSS current with the industries that use these reference standards by incorporating the latest edition of these standards and new relevant standards.

DATES: Comment Due Date: December 29, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 9156, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–6423 (this is not a toll-free number). Persons with hearing or speech impairments may access that number toll-free via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) (the Act) authorizes the Secretary of HUD to establish and amend the Federal Manufactured Home Construction and Safety Standards (the Standards), codified in 24 CFR part 3280. The purposes of the Act are ''to reduce the number of personal injuries and deaths and the amount of insurance cost and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes'' (42 U.S.C. 5401). Additionally, OMB Circular A–119, as revised on February 19, 1998 (63 FR 8546) for consistency with the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; 110 Stat. 775) (NTTAA), requires Federal agencies to use appropriate technical standards that are developed or adopted by private sector standards entities. Section 15(b)(7) of OMB Circular A–119 encourages agencies to review, in a timely manner, their regulations that may reference obsolete and outdated standards. In accordance with the Act and these purposes, HUD is issuing these proposed amendments to the FMHCSS for public comment.

Through this proposed rule, HUD identifies those standards incorporated by reference in the FMHCSS for which it has evaluated updated voluntary consensus and industry standards and recommends adoption of updated standards in accordance with section 11 of OMB Circular A–119. This proposed rule only includes updates for those reference standards for which HUD is ready to accept a more recent edition. In those areas for which this rule is not proposing a more recent edition, HUD considers future rulemaking to be more appropriate. HUD intends to review the currency and applicability of the incorporated reference standards regularly, and to prepare proposed amendments to update them on a 2-year cycle. Where a reference standard change would impose additional compliance burdens or affect the performance of the homes, HUD will always consider the advisability of separate rulemaking.

Since these proposed amendments only involve reference standards, the presentation of the changes and discussion is in the form of tables. These tables will list the reference standards by their designation, edition date, title, and the sections of the FMHCSS in which it can be found. Table 1 lists all the reference standards currently in the FMHCSS. Table 2 lists all the reference standards that this rule proposes to include in the FMHCSS. An indicator with each reference standard will provide the action being taken on each standard by this proposed rule. Table 3 lists those organizations providing the reference standards to be incorporated. Table 4 lists new reference standards that previously were not referenced in the FMHCSS, and provides specific comments about some of the standards. (Note: The reference standards in Table 4 are also listed in Table 2.) Table 5 lists those reference standards that would be deleted from the FMHCSS.

II. Comments Requested

This proposed rule invites public comment prior to the final issuance of changes to the standards referenced in part 3280. Commenters are urged to identify and address the particular standards for which comment is being submitted. Commenters also may offer suggestions for more appropriate or more current substitutions of specific proposed standards.

III. Reference Standards Currently In Effect (Table 1)

Table 1 lists those reference standards currently in effect in the FMHCSS. The last column in Table 1 indicates those sections of part 3280 in which the applicable standard is referenced.

TABLE 1.—LIST OF STANDARDS CURRENTLY REFERENCED IN 24 CFR PART 3280

Standards designation	Date	Title	24 CFR part 3280 reference
AA	1986	Specification for Aluminum Structures, Construction Manual Section 1, Fifth Edition.	3280.304(b)(1).
AAMA 1503.1	1988	Voluntary Test Method for Thermal Transmittance and Condensation Resistance of Windows, Doors, and Glazed Wall Sections.	3280.508(e).

TABLE 1.—LIST OF STANDARDS CURRENTLY REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
AAMA 1701.2	1985	Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing.	3280.403(b) 3280.403(e) 3280.403(e)(2) 3280.404(b)
AAMA 1702.2	1985	Swinging Exterior Passage Doors Voluntary Standard for Utilization in Manufactured Housing.	3280.405(b) 3280.405(e) 3280.405(e)(2)
AAMA 1704	1985	Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing.	3280.404(b) 3280.404(e)
AFPA	1991	National Design Specifications for Wood Construction With Supplement, Design Values for Wood Construction.	3280.304(b)(1)
AFPA	1992	Wood Structural Design Data	3280.304(b)(1)
AFPA	1992	Design Values for Joists and Rafters, American Softwood Lumber Standard Sizes.	3280.304(b)(1)
AISC	1989	Specification for Structural Steel Buildings Allowable Stress Design and Plastic Design.	3280.304(b)(1) 3280.305(i)(1)
AISI	1989	Specification for the Design of Cold-Formed Steel Structural Members.	3280.304(b)(1) 3280.305(i)(1)
AISI	1974	Stainless Steel Cold-Formed Structural Design Manual	3280.304(b)(1) 3280.305(i)(1)
AISI	1973	Manual for Structural Applications of Steel Cables for Buildings	3280.304(b)(1)
AITC A190.1	1992	For Wood Products-Structural Glued Laminated Timber	3280.304(b)(1)
ANSI A208.1	1989	Wood Particleboard	3280.304(b)(1)
ANSI C73.17	1972	Dimensions of Caps, Plugs and Receptacles, Grounding Type	3280.803(g)
ANSI Z21.1b	1993	Household Cooking Gas Appliances	3280.703
ANSI Z21.5.1	1992	Gas Clothes Dryers Type I	3280.703
ANSI Z21.10	1992	Gas Water Heaters	3280.707(d)(2).
ANSI Z21.15	1992	Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves.	3280.703.
ANSI Z21.19	1992	Refrigerators Using Gas Fuel	3280.703.
ANSI Z21.20	1992	Automatic Gas Ignition Systems and Components	3280.703.
ANSI Z21.21	1992	Automatic Valves for Gas Appliances	3280.703.
ANSI Z21.22a	1990	Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems.	3280.604(b)(2). 3280.703.
ANSI Z21.23a	1991	Gas Appliance Thermostats	3280.703.
ANSI Z21.24	1992	Metal Connectors for Gas Appliances	3280.703.
ANSI Z21.40	1982	Gas Fired Absorption Summer Air Conditioning Appliances	3280.703 3280.714(a)2.
ANSI Z21.47	1992	Gas-Fired Central Furnaces	3280.703.
ANSI Z34.1	1982	For Certification—Third-Party Certification Program	3280.405(e)(1).
ANSI Z34.1	1987	For Certification—Third-Party Certification Program	3280.403(e)(1).
ANSI Z97.1	1984	Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings.	3280.113(b). 3280.304(b)(1). 3280.403(d)(1). 3280.607(b)(3)(iii).
ANSI Z124.1	1991	Plastic Bathtubs Units With Addenda	3280.604(b)(2).
ANSI Z124.2a	1990	Plastic Shower Receptors and Shower Stalls With Addendum	3280.604(b)(2).
ANSI Z124.3a	1990	Plastic Lavatories With Addendum	3280.604(b)(2).
ANSI Z124.4a	1990	Plastic Water Closets, Bowls, and Tanks With Addendum	3280.604(b)(2).
ANSI/A190.1 AITC	1992	For Wood Products, Structural Glued Laminated Timber	3280.304(b)(1).
ASME/A112.1.2	1991	Air Gaps in Plumbing Systems	3280.604(b)(2)
ANSI/A112.14.1	1975	Backflow Valves	3280.604(b)(2).
ANSI/A112 ASME 18.1M	1989	Plumbing Fixture Fittings	3280.604(b)(2).
ANSI/A112 ASME 19.1M	1987	Enameled Cast Iron Plumbing Fixtures	3280.604(b)(2).
ANSI/A112 ASME 19.2M	1990	Vitreous China Plumbing Fixtures	3280.604(b)(2).
ANSI/A112 ASME 19.3M	1987	Stainless Steel Plumbing Fixtures (Designed for Residential Use).	3280.604(b)(2).
ANSI/A112 ASME 19.4M	1984	Porcelain Enameled Formed Steel Plumbing Fixtures	3280.604(b)(2).
ANSI/A112 ASME 19.5M	1979	Trim for Water Closet, Bowls, Tanks and Urinals	3280.604(b)(2).
ANSI/A112 ASME 19.7M	1987	Whirlpool Bathtub Appliances	3280.604(b)(2).
ANSI/A112 ASME 19.8M	1989	Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs and Whirlpool Bathtub Appliances.	3280.604(b)(2).
ANSI/A112 ASME 21.3M	1985	Hydrants for Utility and Maintenance Use	3280.604(b)(2).
ANSI/A112 ASME 26.1	1975	Water Hammer Arresters	3280.604(b)(2)
ANSI/B1. ASME 20.1	1983	Pipe Threads, General Purpose (Inch)	3280.604(b)(2). 3280.703. 3280.705(e). 3280.706(d).
ANSI/B16.3 ASME	1992	Malleable Iron Threaded Fittings	3280.604(b)(2).
ANSI/B16.4 ASME	1992	Gray Iron Threaded Fittings	3280.604(b)(2).
ANSI/B16.15 ASME	1985	Cast Bronze Threaded Fittings, Classes 125 and 250	3280.604(b)(2).

TABLE 1.—LIST OF STANDARDS CURRENTLY REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
ANSI/B16.18 ASME	1984	Cast Copper Alloy Solder-Joint Pressure Fittings	3280.604(b)(2).
ANSI/B16.22 ASME	1989	Wrought Copper and Copper Alloy Solder-Joint Pressure Fitting	3280.604(b)(2).
ANSI/B16.23 ASME	1992	Cast Copper Alloy Solder-Joint Drainage Fittings—DWV	3280.604(b)(2).
ANSI/B16.26 ASME	1988	Cast Copper Alloy Fittings for Flared Copper Tubes	3280.604(b)(2).
ANSI/B16.29 ASME	1986	Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings—DWV.	3280.604(b)(2).
ANSI/B36.10 ASME	1979	Welding and Seamless Wrought Steel Pipe	3280.604(b)(2). 3280.703. 3280.705(b)(1). 3280.706(b)(1).
ANSI/A135.AHA 4	1982	Basic Hardboard	3280.304(b)(1).
ANSI/A135.AHA 5	1988	Prefinished Hardboard Paneling	3280.304(b)(1).
ANSI/A135.AHA 6	1990	Hardboard Siding	3280.304(b)(1).
ANSI 210/ARI 240	1989	Unitary Air-Conditioning and Air-Source Heat Pump Equipment	3280.511(b) 3280.703 3280.714(a)(1) 3280.714(a)(1)(ii). 3280.714(a)(1) (iii).
ANSI/14 NSF	1990	Plastic Piping Components and Related Materials	3280.604(b)(2).
ANSI/24 NSF	1988	Plumbing System Components for Manufactured Homes and Recreation Vehicles.	3280.604(b)(2).
ANSI/I.S. 1 NWWDA	1987	Wood Flush Doors	3280.304(b)(1). 3280.405(c)(1).
ANSI/I.S. 2 NWWDA	1987	Wood Windows	3280.304(b)(1).
ANSI/I.S. 3 NWWDA	1988	Wood Sliding Patio Doors	3280.304(b)(1).
ANSI/I.S. 4 NWWDA	1981	Water Repellent Preservative Non-Pressure Treatment for Millwork.	3280.304(b)(1).
APA E 30M	1993	Design/Construction Guide, Residential and Commercial	3280.304(b)(1).
APA S 811M	1990	Design and Fabrication of Plywood Curved Panels	3280.304(b)(1).
APA S 812P	1992	Design and Fabrication of Glued Plywood Lumber Beams	3280.304(b)(1).
APA U 813K	1990	Design and Fabrication of Plywood Stressed-Skin Panels	3280.304(b)(1).
APA U 814G	1990	Design and Fabrication of Plywood Sandwich Panels	3280.304(b)(1).
APA H 815D	1989	Design and Fabrication of All-Plywood Beams	3280.304(b)(1).
APA Y 510Q	1993	Plywood Design Specification	3280.304(b)(1).
APA-PRP E–108P, E445N	1989	Performance Standards and Policies for Structural Use Panels	3280.304(b)(1).
APA E 30M	1993	APA Design/Construction Guide, Residential and Commercial	3280.304(b)(1).
ASCE 7	1988	American Society of Civil Engineering Minimum Design Loads for Buildings and Other Structures.	3280.304(b)(1). 3280.305(c)(1)(ii)(A).
ASHRAE	1989	ASHRAE Handbook of Fundamentals	3280.508(a), (b). 3280.511(a)(1).
ASME	1986	ASME Boiler and Pressure Vessel Code, VIII, Division 1	3280.704(b)(2).
ASSE 1001	1990	Performance Requirements for Pipe Applied Atmospheric Type Vacuum Breakers.	3280.604(b)(2).
ASSE 1002	1986	Performance Requirements for Water Closet Flush Tank Fill Valves (Ballcocks).	3280.604(b)(2).
ASSE 1006	1986	Plumbing Requirements for Residential Use (Household) Dishwashers.	3280.604(b)(2).
ASSE 1007	1986	Performance Requirements for Home Laundry Equipment	3280.604(b)(2).
ASSE 1008	1986	Performance Requirements for Household Food Waste Disposer Units.	3280.604(b)(2).
ASSE 1011	1982	Performance Requirements for Hose Connection Vacuum Breakers.	3280.604(b)(2).
ASSE 1014	1990	Performance Requirements for Handheld Showers	3280.604(b)(2).
ASSE 1016	1988	Performance Requirements for Individual Thermostatic Pressure Balancing and Combination Control for Bathing Facilities.	3280.604(b)(2).
ASSE 1017	1986	Performance Requirements for Temperature Activated Mixing Valves for Primary Domestic Use.	3280.604(b)(2).
ASSE 1019	1978	Performance Requirements for Wall Hydrants, Frost Proof Automatic Draining, Anti-Backflow Types.	3280.604(b)(2).
ASSE 1023	1979	Performance Requirements for Hot Water Dispensers, Household Storage Type Electrical.	3280.604(b)(2).
ASSE 1025	1978	Performance Requirements for Diverters for Plumbing Faucets with Hose Spray, Anti-Siphon Type, Residential Applications.	3280.604(b)(2).
ASSE 1037	1990	Performance Requirements for Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures.	3280.604(b)(2).
ASTM A53	1993	Standard Specification for Pipe, Steel, Black and Hot-Dipped Zinc-Coated, Welded and Seamless.	3280.604(b)(2). 3280.703.
ASTM A74	1992	Standard Specification for Cast Iron Soil Pipe and Fittings	3280.604(b)(2).
ASTM A539	1990	Standard Specification for 1983 Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines.	3280.703 3280.705(b)(4).

TABLE 1.—LIST OF STANDARDS CURRENTLY REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
ASTM B42	1993	Standard Specification for Seamless Copper Pipe, Standard Sizes.	3280.604(b)(2) 3280.703.
ASTM B43	1991	Standard Specification for Seamless Red Brass Pipe, Standard Sizes.	3280.604(b)(2) 3280.705(b)(1).
ASTM B88	1993	Standard Specification for Seamless Copper Water Tube	3280.604(b)(2) 3280.703 3280.705(b)(3) 3280.706(b)(3).
ASTM B251	1993	Standard Specification for General Requirements for Wrought Seamless Copper and Copper Alloy Tube.	3280.604(b)(2) 3280.703.
ASTM B280	1993	Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service.	3280.703 3280.705(b)(3) 3280.706(b)(3).
ASTM B306	1992	Standard Specification for Copper Drainage Tube (DWV)	3280.604(b)(2).
ASTM C36	1993	Standard Specification for Gypsum Wallboard	3280.304(b)(1).
ASTM C564	1988	Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings.	3280.604(b)(2) 3280.611(d)(5).
ASTM D781	1973	Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard.	3280.304(b)(1) 3280.305(g)(5).
ASTM D2235	1988	Standard Specification for Solvent Cement for Acrylonitrile-Butadiene -Styrene (ABS) Plastic Pipe and Fittings.	3280.604(b)(2).
ASTM D2564	1991	Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems.	3280.604(b)(2).
ASTM D2661	1991	Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste, and Vent Pipe and Fittings.	3280.604(b)(2).
ASTM D2665	1991	Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings.	3280.604(b)(2).
ASTM D2846	1992	Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot-and Cold-Water Distribution Systems.	3280.604(b)(2).
ASTM D3309	1992	Standard Specification for Polybutylene (PB) Plastic Hot-and Cold-Water Distribution Systems.	3280.604(b)(2).
ASTM D3311	1992	Standard Specification for Drain, Waste, and Vent (DWV) Plastic Fittings Patterns.	3280.604(b)(2).
ASTM D3953	1991	Standard Specification for Strapping, Flat Steel and Seals	3280.306(g)(2) 3280.306(b)(2)(v).
ASTM D4442	1992	Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials.	3280.304(b)(1).
ASTM D4444	1992	Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters.	3280.304(b)(1).
ASTM E–84	1991	Standard Test Method for Surface Burning Characteristics of Building Materials.	3280.203(a).
ASTM E96	1993	Standard Test Methods for Water Vapor Transmission of Materials.	3280.504(a).
ASTM E162	1990	Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source.	3280.203(a).
ASTM E773	1988	Standard Test Methods for Seal Durability of Sealed Insulating Glass Units.	3280.403(d)(2).
ASTM E774	1992	Standard Specification for Sealed Insulating Glass Units	3280.403(d)(2).
ASTM E1333	1990	Standard Test Method for Determining Formaldehyde Levels from Wood Products Under Defined Test Conditions Using a Large Chamber.	3280.406(b).
ASTM F628	1991	Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40, Plastic Drain, Waste and Vent Pipe with a Cellular Core.	3280.604(b)(2).
CISPI 301	1990	Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications.	3280.604(b)(2).
CISPI HSN	1985	Specification for Neoprene Rubber Gaskets for HUB and Spigot Cast Iron Soil Pipe and Fittings.	3280.611(d)(5)(iv).
FS WWP541E	1980	Plumbing Fixtures (General Specifications)	3280.604(b)(2).
FS ZZR765B	1970	Silicone Rubber, Low and High Temperature and Tear Resistant, Conforming to Rubber, Silicone.	3280.611(d)(5)(iv).
HPMA HP SG	1986	Structural Design Guide for Hardwood Plywood Wall Panels	3280.304(b)(1).
HPMA HP 1	1993	Interim Voluntary Standard for Hardwood and Decorative Plywood.	3280.304(b)(1).
HUD UM 25d	1973	Application and Fastening Schedule: Power-Driven, Mechanically Driven and Manually Driven Fasteners.	3280.304(b)(1).
HUD 5945 USER	1992	Overall U-Values and Heating/Cooling Loads Manufactured Homes, PNL 8006.	3280.508(b).
IAPMO PS 2	1989	Material and Property Standard for Cast Brass and Tubing P-Traps.	3280.604(b)(2).

TABLE 1.—LIST OF STANDARDS CURRENTLY REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
IAPMO PS 4	1990	Material and Property Standard for Drains for Prefabricated and Precast Showers.	3280.604(b)(2).
IAPMO PS 5	1984	Material and Property Standard for Special Cast Iron Fittings	3280.604(b)(2).
IAPMO PS 9	1984	Material and Property Standard for Diversion Tees and Twin Waste Elbow.	3280.604(b)(2).
IAPMO PS 14	1989	Material and Property Standard for Flexible Metallic Water Connectors.	3280.604(b)(2).
IAPMO PS 23	1989	Material and Property Standard for Drainage Dishwasher Airgaps.	3280.604(b)(2).
IAPMO PS 31	1991	Material and Property Standards for Backflow Prevention Assemblies.	3280.604(b)(2).
IAPMO TSC 9	1992	Standard for Gas Supply Connectors for Manufactured Mobile Homes.	3280.703.
IAPMO TSC 22	1985	Standard for Porcelain Enameled Formed Steel Plumbing Fixtures.	3280.604(b)(2).
IAS 3	1987	AGA Requirements for Gas Connectors for Connection of Fixed Appliances for Outdoor Installation, Park Trailers and Manufactured (Mobile) Homes to the Gas Supply.	3280.703.
IIT J 6461	1989	Development of Mobile Home Fire Test Methods to Judge the Fire-Safe Performance of Foam Plastic.	3280.207(a)(4).
MIL L1054E	1975	Liners, Case, and Sheet, Overwrap; Water-Vapor Proof or Waterproof, Flexible.	3280.611(d)(5)(iv).
NFPA 31	1992	Installation of Oil-Burning	3280.703.
	1983	Equipment	3280.707(f).
NFPA 54	1992	Natural Fuel Gas Code	3280.703.
NFPA 58	1992	Standard for the Storage and Handling of Liquefied Petroleum Gases.	3280.703. 3280.704(b)(5)(i).
NFPA 70	1993	National Electrical Code	3280.801(a). 3280.801(b).
NFPA 90B	1993	Warm Air Heating and Air Conditioning Systems	3280.703.
NWWDA I.S. 3	1988	Wood Sliding Patio Doors	3280.304(b)(1).
NWWDA I.S. 4	1981	Water Repellent Preservative Non Pressure Treatment for Millwork.	3280.405(c)(1). 3280.304(b)(2).
PS 1	1983	Voluntary Product Standard, Construction and Industrial Plywood.	3280.304(b)(1).
PS 2	1992	Performance Standard for Wood-Based Structural Use Panels	3280.304(b)(1).
PS 20	1994	American Softwood Lumber Standard	3280.304(b)(1).
SAE J533b	1972	Flares for Tubing	3280.703. 3280.705(f)(1). 3280.705(f)(2).
SJI	1992	Standard Specification Load Tables and Weight Tables for Steel Joists and Steel Joist Girders.	3280.304(b)(1).
TPI	1985	Design Specifications for Metal Plate Connected Wood Trusses	3280.304(b)(1).
UL 94	1991	Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.	3280.715(e)(1).
UL 103	1989	Chimneys, Factory-Built Residential Type and Building Heating Appliance.	3280.703.
UL 109	1993	Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service and Marine Use.	3280.703.
UL 127	1992	Factory-Built Fireplaces	3280.703.
UL 174	1991	Household Electric Storage Tank Water Heaters	3280.703.
UL 181	1990	Factory-Made Air Ducts and	3280.703.
	1984	Connectors	3280.715(e).
UL 217	1993	Single and Multiple Station Smoke Detectors	3280.208(c).
UL 307A	1990	Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles.	3280.703. 3280.707(f).
UL 307B	1987	Gas Burning Heating Appliances for Mobile Homes and Recreational Vehicles.	3280.703.
UL 311	1990	Roof Jacks for Manufactured Homes and Recreational Vehicles	3280.703.
UL 441	1991	Gas Vents	3280.703.
UL 465	1987	Central Cooling Air Conditioners	3280.703.
UL 569	1990	Pigtail and Flexible Hose Connectors for LP-Gas	3280.703.
UL 737	1991	Fireplace Stoves	3280.703.
UL 1025	1991	Electric Air Heaters	3280.703.
UL 1042	1993	Electric Baseboard Heating Equipment	3280.703.
UL 1096	1988	Electric Central Air Heating Equipment	3280.703.
UL 1482	1988	Room Heaters Solid-Fuel Type	3280.703.

IV. Proposed Changes To Reference Standards (Table 2)

Table 2 is the list of updated standards being proposed. Those reference standards that would be deleted from HUD's incorporation by reference do not appear in this table; however, they are listed, along with the reason for deletion, in Table 5. When the most recent edition of a reference standard is being proposed, it is indicated by a ''U.'' If the current edition would be retained because it is the most current, it is indicated by a ''NC.'' Updated reference standards that would impose new or significantly altered requirements are on hold and are indicated by ''H.'' New reference standards proposed to be incorporated are indicated by an ''N''; the new standards are listed in Table 5. The indicator is located just above the first letter of the standards designation.

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280

Standards designation	Date	Title	24 CFR part 3280 reference
U AA	1997	Specification for Aluminum Structures, Construction Manual Section 1.	3280.304.
N AAMA/NWWDA 101/I.S.2–97	1997	Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors.	3280.304(b)(1). 3280.405(c)(2).
U AAMA 1503	1998	Voluntary Test Method for Thermal Transmittance and Condensation Resistance of Windows, Doors, and Glazed Wall Sections.	3280.508(e). *1503 used to be 1503.1
N AAMA 1600	1990	Voluntary Specification for Skylights	3280.403(b).
U AAMA 1701.2	1995	Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured-Housing.	3280.403(b). 3280.403(e). 3280.403(e)(2).
U AAMA 1702.2	1995	Swinging Exterior Passage Doors Voluntary Standard for Utilization in Manufactured Housing.	3280.405(b). 3280.405(e). 3280.405(e)(2).
H AAMA 1704	1985	Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing.	3280.404(b). 3280.404(e).
U AFPA	1997	National Design Specifications for Wood Construction, 1997 Edition, With Supplement, Design Values for Wood Construction.	3280.304(b)(1)
U AFPA	1993	Design Values for Joists and Rafters, American Softwood Lumber Standard Sizes.	3280.304(b)(1).
NC AFPA	1992	Wood Structural Design Data, 1986 Edition with 1992 Revisions	3280.304(b)(1).
NC AFPA	1993	Span Tables for Joist and Rafters	3280.304(b)(1).
NC AISC	1981	Specification for Structural Steel Buildings-Allowable Stress Design and Plastic Design June 1, 1989.	3280.304(b)(1). 3280.305(i)(1).
U AISI	1996	Specification for the Design of Cold-Formed Steel Structural Members.	3280.304(b)(1). 3280.305(i)(1).
NC AISI	1974	Stainless Steel Cold-Formed Structural Design Manual	3280.304(b)(1). 3280.305(i)(1).
NC AISI	1973	Manual for Structural Applications of Steel Cables for Buildings	3280.304(b)(1).
NC ANSI A190.1 AITC	1992	For Wood Products-Structural Glue Laminated Timber	3280.304(b)(1).
U ANSI A208.1	1993	Wood Particleboard	3280.304(b)(1).
N ANSI A208.2	1994	Medium Density Fiberboard	3280.304(b)(1).
NC ANSI C72.1	1972	Electric Storage Water Heaters	3280.707(d).
NC ANSI C73.17	1972	Dimension of Caps, Plugs and Receptacles, Ground Type	3280.803(g).
U ANSI Z21.1	1996	Household Cooking Gas Appliances with supplement Z21.1a 1997.	3280.703.
U ANSI Z21.5.1	1995	Gas Clothes Dryers Volume 1, Type 1 with supplement Z21.5.1a 1996.	3280.703.

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
U ANSI Z21.10	1993	Gas Water Heaters—Volume 1 Storage Water Heaters with Input Ratings of 75,000 BTU per hour or Less with supplement 1a 1994, 1b 1994, & 1c 1994.	3280.707(d)(2).
U ANSI Z21.15	1997	Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves.	3280.703.
U ANSI Z21.19	1995	Refrigerators Using Gas Fuel with supplement .19a in 1992 and .19b in 1995.	3280.703.
U ANSI Z21.20	1997	Automatic Gas Ignition Systems and Components	3280.703.
U ANSI Z21.21	1995	Automatic Valves for Gas Appliances	3280.703.
NC ANSI Z21.22	1986	Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems With Addendum Z21.22a–1990.	3280.604(a). 3280.703.
U ANSI Z21.23	1993	Gas Appliance Thermostats with supplement 23a in 1994 and 23b in 1997.	3280.703.
U ANSI Z21.24	1997	Connectors for Gas Appliances	3280.703.
U ANSI Z21.40.1	1996	Gas Fired Heat Activated, Air Conditioning and Heat Pump Appliances with supplement .1a in 1997.	3280.703. 3280.714(a)(2).
U ANSI Z21.47	1993	Gas-Fired Central Furnaces with supplements .47a in 1995 .47b in 1997.	3280.703.
U ANSI Z21.64	1990	Direct Vent Central Furnaces With Addendum Z21.64a–1992	3280.703.
U ANSI Z34.1	1993	Third Party Certification	3280.403(e)(1). 3280.405(e)(1).
U ANSI Z124.1	1995	Plastic Bathtubs Units	3280.604(a).
U ANSI Z124.2	1995	Plastic Shower Receptors and Shower Stalls	3280.604(a).
U ANSI Z124.3	1995	Plastic Lavatories	3280.604(a).
U ANSI Z124.4	1996	Plastic Water Closets, Bowls, and Tanks	3280.604(a).
U ANSI/A135.4 AHA	1995	Basic Hardboard	3280.304(b)(1).
U ANSI/A135.5 AHA	1995	Prefinished Hardboard Paneling	3280.304(b)(1).
U ANSI 210/ARI 249 Air	1994	Unitary Air-Conditioning & Source Heat Pump Equipment	3280.511(b). 3280.703. 3280.714(a)(1). 3280.714(a)(1)(ii). 3280.714(a)(1)(iii).
NC ANSI A112.1 ASME .2	1991	Air Gaps in Plumbing Systems	3280.604(a).
U ANSI A112. ASME 14.1	1990	Backflow Valves *Reaffirmed 1990	3280.604(a).
U ANSI A112 ASME 18.1M	1996	Plumbing Fixture Fittings	3280.604(a).
U ANSI A112 ASME 19.1M	1994	Enameled Cast Iron Plumbing Fixtures	3280.604(a).
U ANSI A112 ASME 19.2M	1995	Vitreous China Plumbing Fixtures	3280.604(a).
NC ANSI A112 ASME 19.3M	1987	Stainless Steel Plumbing Fixtures Designed for Residential Use	3280.604(a).
U ANSI/A112 ASME 19.4M	1994	Porcelain Enameled Formed Steel Plumbing Fixtures	3280.604(a).
NC ANSI/A112 ASME 19.5M	1979	Trim for Water Closet, Bowls, Tanks and Urinals *Reaffirmed 1990	3280.604(a).
U ANSI/A112 ASME 19.7	1995	Whirlpool Bathtub Appliances	3280.604(a).

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
NC ANSI/A112. ASME 19.8	1987	Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs and Whirlpool Bathtub Appliances. *Reaffirmed 1996	3280.604(a).
NC ANSI/A112 ASME 21.3M	1985	Hydrants for Utility and Maintenance Use *Reaffirmed 1995	3280.604(a).
NC ANSI/A112 ASME 26.1	1975	Water Hammer Arresters	3280.604(a).
NC ANSI/B1.20 ASME .1	1983	Pipe Threads, General Purpose (Inch) *Reaffirmed 1992	3280.604(a). 3280.703. 3280.705(e). 3280.706(d).
NC ANSI B16.3 ASME	1992	Malleable Iron Threaded Fittings	3280.604(a).
NC ANSI B16.4 ASME	1992	Gray Iron Threaded Fittings	3280.604(a).
NC ANSI B16.15 ASME	1985	Cast Bronze Threaded Fittings	3280.604(a).
U ANSI/B16.18 ASME	1994	Cast Copper Alloy Solder-Joint Pressure Fittings	3280.604(a).
U ANSI/B16.22 ASME	1995	Wrought Copper and Copper Alloy Solder-Joint Pressure Fitting	3280.604(a).
U ANSI/B16.29 ASME	1994	Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage fittings DWV.	3280.604(a).
U ANSI/B36.10 ASME M	1996	Welding and Seamless Wrought Steel Pipe	3280.604(a). 3280.703. 3280.705(b)(1). 3280.706(b)(1).
U ANSI/14 NSF	1996	Plastic Piping Components and Related Materials	3280.604(a).
U ANSI/24 NSF	1988	Plumbing System Components for Manufactured Homes and Recreation Vehicles. *Reaffirmed 1996	3280.604(a).
N ANSI/61 NSF	1997	Drinking Water Systems Components-Health Effects	3280.604(b)(2).
U ANSI/TPI 1	1995	National Design Standard for Metal Plate Connected Wood Truss Construction.	3280.304(b)(1).
NC APA E 30M	1993	Design/Construction Guide m Residential and Commercial	3280.394(b)(1).
NC APA S 811M	1990	Design and Fabrication of Curved Panels	3280.304(b)(1).
NC APA S 812P	1992	Design and Fabrication of Glued Plywood Lumber Beams	3280.304(b)(1).
NC APA U 813K	1990	Design and Fabrication of Plywood Stressed Skin Panels	3280.304(b)(1).
NC APA U 814G	1990	Design and Fabrication of Plywood Sandwich Panels	3280.304(b)(1).
U APA H 815E	1995	Design and Fabrication of All Plywood Beams, Supplement 5	3280.304(b)(1).
U APA 51	1997	Plywood Design Specification	3280.304(b)(1).
U APA E 30M	1996	APA Design Construction Guide, Residential and Commercial Structures.	3280.304(b)(1)(ii)(A). 3280.305(c)(2)(iii)(A). 3280.362(2)(c)(i)(E).
H ASCE 7	1988	American Society of Civil Engineers, Minimum Design Loads for Buildings.	3280.5 3280.304(b)(1) 3280.305(c)(1).
U ASHRAE	1997	ASHRAE Handbook of Fundamentals I.P. Edition	3280.508 3280.511.
NC ASME	1992	ASME Boiler and Pressure Vessel Code, VIII, Pressure Vessels Division 1.	3289.704(b)(2).

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
NC ASSE 1001	1990	Performance Requirements for Pipe Applied Atmospheric Type Vacuum Breakers.	3280.604(a).
NC ASSE 1002	1986	Performance Requirements for Water Closet Flush Tank Fill Valves (Ballcocks).	3280.604(a).
NC ASSE 1006	1986	Plumbing Requirements for Residential Use (Household) Dishwashers.	3280.604(a).
NC ASSE 1007	1986	Performance Requirements for Home Laundry Equipment	3280.604(a).
NC ASSE 1008	1986	Performance Requirements for Household Food Waste Disposer Units.	3280.604(a).
U ASSE 1011	1993	Performance Requirements for Hose Connection Vacuum Breakers.	3280.604(a).
NC ASSE 1014	1990	Performance Requirements for Hand Held Showers	3280.604(a).
NC ASSE 1016	1988	Performance Requirements For Individual Thermostatic Pressure Balancing and Combination Control for Bathing Facilities.	3280.604(a).
NC ASSE 1017	1986	Performance Requirements for Temperature Activated Mixing Valves for Primary Domestic Use.	3280.604(a).
U ASSE 1019	1995	Performance Requirements for Vacuum Breaker Wall Hydrants, Freeze Resistant, Automatic Draining Type.	3280.604(a).
NC ASSE 1023	1979	Performance Requirements for Hot Water Dispensers, Household Storage Type.	3280.604(a).
NC ASSE 1025	1978	Performance Requirements for Diverters for Plumbing for Faucets with Hose Spray, Anti-Siphon Type Residential Applications.	3280.604(a).
NC ASSE 1037	1990	Performance Requirements for Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures.	3280.604(a).
N ASSE 1051	1996	Air Admittance Valves for Plumbing Drainage Systems-Fixture and Branch Devices.	3280.604 3280.611(d).
U ASTM A53–96	1996	Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	3280.604(a) 3280.703.
U ASTM A74–96	1996	Standard Specification for Cast Iron Soil Pipe and Fittings	3280.604(a).
U ASTM A539–96	1996	Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines.	3280.703 3280.705(b)(4).
U ASTM B42–96	1996	Standard Specification for Seamless Copper Pipe, Standard Sizes.	3280.604(a) 3280.703.
NC ASTM B43–	1991	Standard Specification for Seamless Red Brass Pipe Standard Sizes.	3280.604(a) 3280.705(b)(1).
U ASTM B88–96	1996	Standard Specification for Seamless Copper Water Tube	3280.604(a) 3280.703 3280.705(b)(3) 3280.706(b)(3).
U ASTM B251–97	1997	Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube.	3280.604(a) 3280.703.
U ASTM B280–95a	1995	Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service.	3280.703 3280.705(b)(3) 3280.706(b)(3).
U ASTM B306–96	1996	Standards Specification for Copper Drainage Tube (DWV)	3280.604(a).
U ASTM C36–97	1997	Standard Specification for Gypsum Wallboard	3280.304(b)(1).

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
U ASTM C564–95a	1995	Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings.	3280.604(a). 3280.611(d)(5).
N ASTM C920–95	1995	Standard Specification for Elastomeric Joint Sealants *Replaces Fed ZZR765B–1970	3280.611(d)(5).
H ASTM D781–73	1973	Standard Test Methods for Puncture and Stiffness of Paper Board and Solid Fiberboard.	3280.304(b)(1). 3280.305(g)(5).
U ASTM D2235–96a	1996	Standard Specification for Solvent Cement for Acrylic-Butadiene-Styrene (ABS) Plastic Pipe & Fittings.	3280.604(a).
U ASTM D2564–96a	1996	Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems.	3280.604(a).
U ASTM D2661–97	1997	Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste and Vent Pipe and Fittings.	3280.604(a).
U ASTM D2665–97	1997	Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe & Fittings.	3280.604(a).
U ASTM D2846/D2846M–97	1997	Standard Specification for Chlorinated Poly (Vinyl) Chloride (CPVC) Plastic Hot- and Cold-Water Distribution Systems.	3280.604(a).
U ASTM D3311–94	1994	Standard Specification for Drain, Waste, and Vent (DWV) Plastic Fittings Patterns.	3280.604(a).
NC ASTM D3953–91	1991	Standard Specification for Steel Strapping, Flat Steel and Seals	3280.306(g) 3280.306(b)(2)(v) .
NC ASTM D4442–92	1992	Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials. *Reapproved 1997	3280.304(b)(1).
NC ASTM D4444	1992	Standard Test Method for Use and Calibration of Hand-Held Moisture Meters.	3280.304(b)(1).
U ASTM D4635–95	1995	Standard Specification for Polyethylene Films Made From Low-Density Polyethylene for General Use & Packaging Applications. *Replaces MIL L1054E–1975	3280.611(d)(5).
U ASTM E84–97a	1997	Standard Test Method for Surface Burning Characteristics of Building Materials.	3280.203(a).
U ASTM E96–95	1995	Standard Test Methods for Water Vapor Transmission of Materials.	3280.504(a). 3280.504(c).
U ASTM E162–94	1994	Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source.	3280.203(a).
U ASTM E773–97	1997	Standard Test Methods for Accelerated Weathering of Sealed Insulating Glass Units.	3280.403(d)(2).
U ASTM E774–97	1997	Standard Specification for the Classification of Durability of Sealed Insulating Glass Units.	3280.403(d)(3).
U ASTM E1333–96	1996	Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.	3280.406(b).
U ASTM F628–97	1997	Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40, Plastic Drain Waste, and Vent Pipe with a Cellular Core.	3280.604(a).
N ASTM F876–96	1996	Standard Specification for Crosslinked Polyethylene (PEX) Tubing.	3280.604(a)
N ASTM F877–96	1996	Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot and Cold Water Distribution Systems.	3280.604(a).

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
N ASTM F1807–97	1997	Specification for Metal Insert Fittings Utilizing a Copper Crimp Ring for SDR–9 Crosslinked Polyethylene Tubing.	3280.604(a).
U CISPI 301–97	1997	Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications.	3280.604(a).
U CISPI 310	1997	Specification for Coupling For Use in Connection With Hubless Cast Iron Soil Pipe & Fittings for Sanitary and Storm Drain, Waste, and Vent Piping.	3280.604(a).
NC CISPI HSN	1985	Specification for Neoprene Rubber Gaskets for Hub and Spigot Cast Iron Soil Pipe & Fittings.	3280.611(d)(5).
U HPVA HP SG–96	1996	Structural Design Guide for Hardwood Plywood Wall Panels Design Guide.	3280.304(b)(1).
U HPVA HP 1	1995	For Hardwood and Decorative Plywood	3280.304(b)(1).
NC HUD–FHA UM–25d–73	1973	Application and Fastening Schedule: Power-Driven, Mechanically Driven and Manually Driven Fasteners, Use of Materials Bulletin UM–25d.	3280.304(b)(1).
NC HUD 0005 User 945	1992	Overall U-Values and Heating/Cooling Loads Manufactured Homes PNL 8006.	3280.508(b).
NC IAPMO PS 2–89	1989	Material and Property Standard for Cast Brass and Tubing P-Trap.	3280.604(a).
NC IAPMO PS 4–90	1990	Material and Property Standard for Drains for Prefabricated and Precast Showers.	3280.604(a).
U IAPMO PS 31–95	1995	Material and Property Standards for Backflow Prevention Assemblies.	3280.604(a).
U IAPMO TCS 9–97	1997	Gas Supply Connectors for Manufactured Homes	3280.703.
U IAPMO TCS 22–97	1997	Porcelain Enameled Formed Steel Plumbing Fixtures	3280.604(a).
NC IAS 3	1987	AGA Requirements for Gas Connectors for Connection of Fixed Appliances for Outdoor Installation, Park Trailers and Manufactured (Mobile) Homes to the Gas Supply.	3280.703.
NC ITT J 6461	1989	Development of Mobile Home Fire Test Methods to Judge the Fire-Safe Performance of Foam Plastic Sheathing and Cavity Insulation.	3280.207(a)(4).
U NFPA 31	1997	Installation of Oil-Burning Equipment	3280.703. 3280.707(f).
U NFPA 54	1996	Natural Fuel Gas Code	3280.703.
U NFPA 58	1995	Standard for the Storage and Handling of Liquefied Petroleum Gases.	3280.703. 3280.704(b)(5)(i).
U NFPA 70	1996	National Electrical Code	3280.801(a). 3280.801(b).
U NFPA 90B	1996	Standard for the Warm Air Heating and Air Conditioning Systems.	3280.703.
N NFRC–100	1997	Procedure for Determining Fenestration Product U Factors April 1997 Edition.	3280.508(e).
U NFPA 220	1995	Standard on Types of Building Construction	3280.202(a)(4). 3280.202(a)(5).
U PS 1–95	1995	Voluntary Product Standard, Construction and Industrial Plywood.	3280.304(b)(1).

TABLE 2.—LIST OF PROPOSED STANDARDS TO BE REFERENCED IN 24 CFR PART 3280—Continued

Standards designation	Date	Title	24 CFR part 3280 reference
N PS 2–92	1992	Voluntary Product Standard Performance Standard for Wood-Based Structural-Use Panels. *Replaces APA PRP 108–86	3380.304(b)(1).
N PS 20	1994	American Softwood Lumber Standard	3280.304(b)(1).
U SAE J533b	1992	Flares for Tubing	3280.703 3280.705(f)(1) 3280.705(f)(2).
NC SJI	1992	Standard Specification Load Tables and Weight Tables for Steel Joist and Steel Joist Girders.	3280.304(b)(1).
NC TPI	1985	Design Specification for Metal Plate Connected Wood Trusses	3280.304(b)(1).
U UL 94	1997	Test for Flammability of Plastic Materials for Parts in Devices and Appliances.	3280.715(e)(1).
U UL 103	1996	Factory-Built Chimneys for Residential Type and Building Heating Appliances.	3280.703.
U UL 109	1997	Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service & Marine Use.	3280.703.
U UL 127	1998	Factory-Built Fireplaces	3280.703.
U UL 174	1997	Household Electric Storage Tank Water Heaters	3280.703.
U UL 181	1996	Factory Made Air Ducts and Air Connectors	3280.703 3280.715(e).
U UL 217	1997	Single and Multiple Station Smoke Alarms	3280.208(c).
U UL 307A	1997	Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles.	3280.703 3280.707(f).
U UL 307B	1997	Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles.	3280.703.
U UL 311	1995	Roof Jacks for Manufactured Homes and Recreational Vehicles	3280.703.
U UL 441	1997	Gas Vents	3280.703.
U UL 559	1993	Heat Pumps	3280.703.
U UL 569	1990	Pigtail and Flexible Hose Connectors for LP-Gas	3280.703 3280.705.
U UL 737	1997	Fireplace Stoves	3280.703.
U UL 1042	1997	Electric Baseboard Heating Equipment	3280.703.
N UL 1278	1994	Movable and Wall-or Ceiling-Hung Electric Room Heaters *Replaces UL 1025–1991	3280.703.
U UL 1482	1997	Solid-Fuel Type Room Heaters	3280.703.
N UL 2021	1997	Fixed and Location-Dedicated Electric Room Heaters * Replaces UL 1025–1991	3280.703.

V. Reference Standards Organizations (Table 3)

Table 3 contains the list of organizations issuing reference standards that are incorporated into the FMHCSS, and provides their acronym, address, telephone number, and facsimile (FAX) number. Requests for copies of the currently referenced standards, or the proposed reference standards, should be addressed to the organization that issues the standards. Reference standards that are not available from their issuing organization may be obtained from the Office of Consumer and Regulatory Affairs, Department of Housing & Urban Development, 451 Seventh Street SW, Washington, DC 20410.

TABLE 3. LIST OF ORGANIZATIONS PROVIDING STANDARDS REFERENCED IN 24 CFR PART 3280

AA	Aluminum Association, 900 19th Street NW, Washington, DC 20006	tel (202) 862–5100. fax (202) 862–5164
AAMA	American Architectural Materials Association, 1540 East Dundee Road, Suite 310, Palatine, Illinois 60067.	tel (708) 202–1350. fax (708) 202–1480.
AFPA	American Forest and Paper Association, 1111 19th Street NW, Washington, DC 20036	tel (202) 463–2700. fax (202) 463–5180.
AHA	American Hardboard Association, 1210 West Northwest Highway, Palatine, Illinois 60067	tel (847) 934–8800. fax (847) 934–8803.
AISC	American Institute of Steel Construction, 1 East Wacker Drive, Suite 3100, Chicago, Illinois 60601	tel (312) 670–2400. fax (312) 670–5403.
AISI	American Iron & Steel Institute, 1101 17th Street NW, Washington, DC 20036	tel (202) 452–7100. fax (202) 463–6573.
AITC	American Institute of Timber Construction, 7012 South Revere Parkway, Suite 140, Englewood, Colorado 80112.	tel (303) 792–9559. fax (303) 792–0669.
ANSI	American National Standards Institute, 11 West 42nd Street, New York, New York 10036	tel (212) 642–4900. fax (212) 398–0023.
APA	APA The Engineered Wood Association, 7011 South 19th Street, Tacoma, Washington 98411	tel (253) 565–6600. fax (253) 565–7265.
ASCE	American Society of Civil Engineers, 1015 15th Street NW, Washington, DC 20005	tel (202) 789–2200. fax (202) 289–6797.
ASHRAE	American Society for Heating, Refrig. & Air Conditioning Engineers, 1791 Tuillie Circle NE, Atlanta, Georgia 30329.	tel (404) 636–8400. fax (404) 321–5478.
ASME	American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017	tel (212) 705–8570. fax (212) 705–8599.
ASSE	American Society of Sanitary Engineering, P.O. Box 40362, Bay Village, Ohio 44140	tel (216) 835–3040. fax (216) 835–3488.
ASTM	American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.	tel (610) 832–9500. fax (610) 832–9555.
CISPI	Cast Iron Soil Pipe Institute, 5959 Shallow Ford Road, Suite 419, Chattanooga, Tennessee 37421	tel (423) 892–0137. fax (423) 892–0817.
FED	General Services Administration, Specifications Building 197, Washington, DC 20407	tel (202) 963–3177. fax (202) 557–8515.
HPVA	Hardwood Plywood and Veneer Association, 1825 Michael Faraday Drive, Reston, Virginia 22090	tel (703) 435–2900. fax (703) 435–2537.
HUD	Department of Housing and Urban Development, Office of Consumer & Regulatory Affairs, 451 Seventh Street SW, Washington, DC 20410.	tel (202) 708–6423. fax (202) 708–4213.
HUD USER	HUD User, P.O. Box 6091, Rockville, Maryland 20849	tel (301) 519–5154. fax (800) 245–2691.
IAS	International Approval Services, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131	tel (216) 524–4990. fax (216) 642–3463.
IAPMO	International Association of Plumbing and Mechanical Officials, 20001 Walnut Drive South, Walnut, California 91789.	tel (909) 595–8449. fax (909) 594–1537.
IIT	IIT Research Institute, 10 West 35th Street, Chicago, Illinois 60616	tel (312) 567–3000. fax (312) 567–4167.
MIL	Defense Printing Service Detachment Office, 700 Robbins Avenue, Building 4D, Philadelphia, Pennsylvania 19111.	tel (215) 697–2667. fax (215) 697–1462.
NFPA	National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269	tel (617) 770–3000. fax (617) 770–0700.
NFRC	National Fenestration Rating Council, Incorporated, 1300 Spring Street, Suite 120, Silver Spring, MD 20910.	tel (301) 589–6372. fax (301) 588–0854.
NSF	NSF International, P.O. Box 130140, Ann Arbor, Michigan 48113	tel (313) 769–8010. fax (313) 769–0109.
NWWDA	National Wood Window & Door Association, 1400 East Touhy Avenue, Des Plaines, Illinois 60018	tel (847) 299–5200. fax (847) 299–1286.
PS	National Institute of Standards & Technology, Voluntary Product Standards, Gaithersburg, Maryland 20810.	tel (301) 975–2000. fax (301) 926–1559.
SAE	Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096	tel (412) 776–4841. fax (412) 776–0243.
SJI	Steel Joist Institute, 1205 48th Avenue North, Suite A, Myrtle Beach, South Carolina 29577	tel (803) 626–1995. fax (803) 449–1343.
TPI	Truss Plate Institute, 583 D'Onofrio Drive, Suite 200, Madison, Wisconsin 53719	tel (608) 833–5900. fax (608) 833 4360.
UL	Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062	tel (847) 272–8800. fax (847) 509–6257.

VI. New Reference Standards (Table 4)

In order to remain abreast of the industries that use those reference standards incorporated into the FMHCSS, and to be in accord with section 11 of OMB Circular A–119, HUD is proposing to incorporate the latest edition of those reference standards and incorporate new relevant reference standards. However, this proposed rule only includes updates for those reference standards for which HUD is ready to accept a more recent edition. In those areas for which this rule is not proposing a more recent edition, HUD considers future rulemaking to be more appropriate. Those new reference

standards not previously incorporated into the FMHCSS are listed in Table 4. Those reference standards being deleted from the FMHCSS are listed in Table 5.

TABLE 4.—LIST OF NEW REFERENCE STANDARDS BEING PROPOSED

AAMA/NWWDA 101/I.S.2–97.	1997	Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors.	3280.304(b)(1). 3280.405(c)(2).
The AAMA/NWWDA 101/I.S.2–97 standard would replace the NWWDA standards I.S.1, .2, .3, and .4.			
AAMA 1600	1990	Voluntary Specification for Skylights	3280.403(b).
ANSI/NSF 61	1997	Drinking Water Systems Components-Health Effects	3280.604(b)(2).
The requirements of the ANSI/NSF 61 standard were previously part of NSF 14, but would now be addressed separately.			
ASSE 1051	1996	Air Admittance Valves for Plumbing Drainage Systems-Fixture and Branch Devices.	3280.604. 3280.611(d).
The ASSE 1051 standard would provide an alternative to the prescriptive requirements for anti-siphon trap vent devices that are specified in § 3280.611(d).			
ANSI A208.2	1994	Medium Density Fiberboard	3280.304(b)(1).
The ANSI A208.2 standard would incorporate the MDF standard that is used by the industry and establish it as the base level for the performance of this product. It would also codify a mandatory formaldehyde emission level for MDF. However, as this standard is currently being used by the industry, its incorporation is not believed to have either an economic or environmental impact.			
ASTM C920–95	1995	Standard Specification for Elastomeric Joint Sealants	3280.611(d)(5).
ASTM F876–96	1996	Standard Specification for Crosslinked Poluethylene (PEX) Tubing.	3280.604(a).
ASTM F877–96	1996	Standard Specification for Crosslinked Poluethylene (PEX) Plastic Hot and Cold Water Distribution Systems.	3280.604(a)
ASTM F1807–97	1997	Specification for Metal Insert Fittings Utilizing a Copper Crimp Ring for SDR–9 Crosslinked Polyethylene Tubing.	3280.604(a).
ASTM F876, F877, and F1807 are being incorporated to provide an appropriate reference for the Crosslinked Polyethylene (PEX) systems currently being installed in manufactured homes. Present PEX installations require that HUD and DAPIAs verify that each system, which is the tubing and specific connectors, is listed for its intended use. With the availability of an appropriate fitting standard, this should no longer be necessary in all cases. Where fittings other than the metal insert type are desired, an appropriate listing of the system would still be required. HUD will consider incorporating other fitting standards recommended in response to this proposed rule change.			
NFRC–100	1997	Procedure for Determining Fenestration Product U Factors April 1997 Edition.	3280.508(e).
The NFRC–100 standard would provide an alternative for those window manufacturers who used this method in order to comply with the mandatory requirements of other programs.			
PS 20	1994	American Softwood Lumber Standard	3280.304(b)(1).
UL 2021	1997	Fixed and Location-Dedicated Electric Room Heaters	3280.703. *Replaces UL 1025–1991

TABLE 5.—LIST OF OBSOLETE REFERENCE STANDARDS BEING DELETED

ANSI/IS 1 NWWDA	1987	Wood Flush Doors *Discontinued-replaced by AAMA/NWWDA 101/I.S.2–1997	3280.304(b)(1). 3280.405(c)(2).
ANSI/IS 2 NWWDA	1987	Wood Windows *Discontinued-replaced by AAMA/NWWDA 101/I.S. 2–1997	3280.304(b)(1).
ANSI/IS 3 NWWDA	1988	Wood Sliding Patio Doors *Discontinued-replaced by AAMA/NWWDA 101/I.S. 2–1997	3280.202(a)(4).
ANSI/IS 4 NWWDA	1981	Water Repellent Preservative Non-Pressure Treatment for Millwork. *Discontinued-replaced by AAMA/NWWDA 101/I.S. 2–1997	3280.304(b)(1).
APA PRP 108	1986	Performance Standards and Policies for Structural-Use Panels *Discontinued-same as PS 2–1992	3280.304(b)(1).
ASTM D3309–92	1992	Standard Specification for Polybutylene (PB) Plastic Hot- & Cold-Water Distribution Systems.	3280.604(a).
Polybutylene tubing is no longer being produced, and it is no longer being installed in manufactured homes. Accordingly, HUD is proposing to remove the standard ASTM D3309–92 from its standards.			
FED WWP541E	1980	Plumbing Fixtures *Discontinued-Replaced by ANSI Z124.1 1995	3280.604(a).
FED ZZR765B	1970	Rubber Silicone *Discontinued-Replaced by ASTM C920–1995	3280.611(d)(5).
IAPMO PS 5–94	1994	Material and Property Standard Special Cast Iron Fittings *Discontinued	3280.604(a).
MIL L1054E	1975	Liners, Case, and Sheet Overwrap Water-Vapor Proof or Waterproof Flexible. *Discontinued replaced by ASTM D4635–1995	3280.611(d)(5).
UL 1025	1991	Electric Air Heaters *Discontinued replaced by UL 1278–1994 and UL 2021–1997	3280.703.

VII. Findings and Certifications

A. Unfunded Mandates Reform Act

This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995).

B. Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. HUD has evaluated the potential effects of this proposed rule and determined that it would not place major burdens on manufactured home manufacturers or their suppliers. In its evaluation, HUD noted that new or updated references are being proposed only for the purpose of remaining abreast of the manufactured home industry. The inclusion of reference standard changes that would impose significant new requirements is not being addressed with this proposed rule. While HUD does not anticipate that this proposed rule would have a significant economic impact on a substantial number of small entities, HUD specifically requests comments regarding alternatives to compliance that may be less burdensome on such entities.

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule are covered by section 604(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974, and therefore, would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

VIII. Incorporation by Reference

Before HUD issues a final rule, these reference standards will be approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards may be obtained from the organizations listed in Table 3.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Home Construction and Safety Standards is 14.171.

List of Subjects in 24 CFR Part 3280

Fire Prevention, Housing Standards, Incorporation by References, Manufactured Homes.

Authority: 42 U.S.C. 3535(d), 5403 and 5424.

Dated: September 25, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing.

[FR Doc. 98–29092 Filed 10–29–98; 8:45 am]

BILLING CODE 4210–72–P

Friday
October 30, 1998

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–09; Introduction

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–09. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–09 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers (Interim)	97–003	Olson.
II	Electronic Commerce in Federal Procurement (Interim)	97–304	Nelson.
III	Alternate Dispute Resolution—1996	97–015	O'Neill.
IV	Pay-As-You-Go Pension Costs	89–012	Olson.
V	Rehabilitation Act, Workers With Disabilities	96–610	O'Neill.
VI	Civil Defense Costs	97–036	Nelson.
VII	Costs Related to Legal/Other Proceedings	95–020	Nelson.
VIII	Service Contracts	97–302	Olson.
IX	Payment Due Dates	97–609	Olson.
X	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–09 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Taxpayer Identification Numbers (FAR Case 97–003)

This interim rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105–32). The rule clarifies requirements for obtaining Taxpayer Identification Number (TIN) information from contractors and forwarding the information to payment offices; specifies that TIN information may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government; and clarifies and updates requirements for reporting contract information and payment information to the Internal Revenue Service.

(*Orders under Federal Supply Schedule (FSS) contracts.* Ordering officials are required to provide the FSS contractor's TIN (and other information) to the payment office for each order under an FSS contract. The General Services Administration is planning to establish an Internet based system by early 1999 that can be used by ordering officials to obtain this information. In the meantime, the information can be obtained from most FSS contract price lists or by requesting it directly from the FSS contractor prior to placing an order.)

Item II—Electronic Commerce in Federal Procurement (FAR Case 97–304)

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, and 14, to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. In addition, this interim rule promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. In order to facilitate access to Federal procurements, Section 850 mandates that a single Governmentwide point of entry be used. Once the Administrator of the Office of Federal Procurement Policy (OFPP) designates the single Governmentwide point of entry, the FAR will be changed accordingly. FACNET qualifies as the single, Governmentwide point of entry until the Administrator of OFPP designates the single, Governmentwide point of entry. Federal procurement systems that employ electronic commerce shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Item III—Alternative Dispute Resolution—1996 (FAR Case 97–015)

This final rule amends FAR 6.302–3, 24.202, 33.2, and the clause at 52.233–1 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition; revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act; and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

Item IV—Pay-As-You-Go Pension Costs (FAR Case 89–012)

The interim rule published as Item I of FAC 84–44 is converted to a final rule with amendments at FAR 15.408, 31.001, 31.205–6, and the clause at 52.215–15. The rule amends the FAR for

consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96–610)

The interim rule published as Item V of FAC 97–05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60–741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

Item VI—Civil Defense Costs (FAR Case 97–036)

This final rule deletes the civil defense cost principle at FAR 31.205–5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

Item VII—Costs Related to Legal/Other Proceedings (FAR Case 95–020)

This final rule amends FAR 31.205–47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for *qui tam* suits in which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205–47 prior to August 24, 1995. For *qui tam* legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205–47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

Item VIII—Service Contracts (FAR Case 97–302)

This final rule revises FAR 32.703–3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

Item IX—Payment Due Dates (FAR Case 97–609)

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232–25, Prompt Payment, and 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

Item X—Technical Amendments

Amendments are being made at sections 1.106, 6.302–3, 14.205–1, 14.407–4, 15.404–1, 19.102, 19.1004, 32.705–1, 33.104, 36.601–4, 41.103, 52.212–5, 52.244–6, and 53.228 in order to update references and make editorial changes.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

FAC 97–09

Federal Acquisition Circular (FAC) 97–09 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–09 are effective December 29, 1998, except for Items I, II, V, and X which are effective October 30, 1998.

Dated: October 23, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: October 16, 1998.

Tom Luedtke,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 98–28954 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 13, 14, 15, and 52

[FAC 97–09; FAR Case 97–003; Item I]

RIN 9000–AI14

Federal Acquisition Regulation; Taxpayer Identification Numbers

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997, and to clarify the Government requirements for reporting of contract information and payment information to the Internal Revenue Service (IRS). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 30, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR), 800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E–Mail comments submitted over the Internet should be addressed to: farcase.97–003@gsa.gov

Please cite FAC 97–09, FAR case 97–003 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–0692. Please cite FAC 97–09, FAR case 97–003.

SUPPLEMENTARY INFORMATION:

A. Background

Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) amends 31 U.S.C. 7701 by requiring that the head of each Federal agency require each contractor doing business with the Government to furnish its Taxpayer Identification Number (TIN) and by requiring the Government to disclose its intent to use such number for purposes of collecting and reporting on any delinquent amounts. Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105–32) amends 26 U.S.C. 6041A(d) to add payments for services provided by corporations to the types of payments that the Government is required to report to the IRS using Form 1099.

This interim rule expands the scope of FAR Subpart 4.9 to require the contractor to provide a TIN for debt collection purposes. Prior to this revision, FAR Subpart 4.9 required the contractor to provide a TIN only to facilitate Government reporting of certain contract information and payment information to the IRS. The rule also deletes the provisions at FAR 52.214–2, Type of Business Organization–Sealed Bidding, and 52.215–4, Type of Business Organization, since the information requested in these provisions is duplicative of the information requested in the provisions at FAR 52.204–3, Taxpayer Identification, and 52.212–3, Offeror Representations and Certifications–Commercial Items, as amended by this rule. In addition, this rule clarifies and updates the requirement for Government agencies to obtain contract information and payment information to facilitate issuance of Form 1099 and other reports to the IRS.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing requirements for contractors to submit TINs, requires the Government to advise contractors of the potential debt collection usage of the TIN, and clarifies and updates requirements for Government reporting of contract information and payment information to the IRS. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR Case 97–003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the interim rule contains information collection requirements. The interim rule decreases the collection requirements currently approved under Office of Management and Budget (OMB) Control Number 9000–0046, since the rule deletes the provisions at FAR 52.214–2 and 52.215–4.

OMB Control Numbers 9000–0097 and 9000–0136 approved the information collection requirements that existed in the FAR at 52.204–3 and 52.212–3, respectively, prior to implementation of this interim rule. Revisions to these provisions required by the interim rule have no net impact on the collection requirements currently approved.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), which was effective upon enactment on April 25, 1996; and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105–32), which applies to payments made after December 31, 1997. An interim rule is necessary to ensure that changes are made to the FAR to address the statutory requirements to notify contractors that the TIN may be used for debt collection purposes, and to add payments for services provided by corporations to the types of payments subject to IRS Form 1099 reporting requirements. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 13, 14, 15, and 52

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition, Policy Division.

Therefore, 48 CFR Parts 1, 4, 13, 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 13, 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the table following the introductory paragraph by removing the FAR segments at 52.214–2 and 52.215–4 and their corresponding OMB Control Numbers.

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.203 is revised to read as follows:

4.203 Taxpayer identification information.

(a) If the contractor has furnished a Taxpayer Identification Number (TIN) when completing the solicitation provision at 52.204–3, Taxpayer Identification, or paragraph (b) of the solicitation provision at 52.212–3, Offeror Representations and Certifications—Commercial Items, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the payment office.

(b) If the TIN or type of organization is derived from a source other than the provision at 52.204–3 or 52.212–3(b), the contracting officer shall annotate the last page of the contract or order forwarded to the payment office to state the contractor's TIN and type of organization, unless this information is otherwise provided to the payment office in accordance with agency procedures.

(c) If the contractor provides its TIN or type of organization to the contracting officer after award, the contracting officer shall forward the information to the payment office within 7 days of its receipt.

(d) *Federal Supply Schedule contracts.* Each contracting officer that places an order under a Federal Supply Schedule contract (see Subpart 8.4) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (b) of this section.

(e) *Basic ordering agreements and indefinite-delivery contracts (other than Federal Supply Schedule contracts).*

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract—

(i) A copy of the agreement or contract with a copy of the completed solicitation provision at 52.204–3 or 52.212–3(b) as the last page of the agreement or contract; or

(ii) The contractor's TIN and type of organization information.

(2) Each contracting officer that places an order under a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (a) or (b) of this section.

4. Subpart 4.9 is revised to read as follows:

Subpart 4.9—Taxpayer Identification Number Information

Sec.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 4.9—Taxpayer Identification Number Information

4.900 Scope of subpart.

This subpart provides policies and procedures for obtaining—

(a) Taxpayer Identification Number (TIN) information that may be used for debt collection purposes; and

(b) Contract information and payment information for submittal to the payment office for Internal Revenue Service (IRS) reporting purposes.

4.901 Definitions.

Common parent, as used in this subpart, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this subpart, means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

4.902 General.

(a) *Debt collection.* 31 U.S.C. 7701(c) requires each contractor doing business with a Government agency to furnish its TIN to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

(b) *Information reporting to the IRS.* The TIN is also required for Government reporting of certain contract information (see 4.903) and payment information (see 4.904) to the IRS.

4.903 Reporting contract information to the IRS.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by $50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of $25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and TIN of the contractor;

(2) Name and TIN of the common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

4.904 Reporting payment information to the IRS.

26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Government agencies, to report to the IRS, on Form 1099, payments made to certain contractors. 26 U.S.C. 6109 requires a contractor to provide its TIN if a Form 1099 is required. The payment office is responsible for submitting reports to the IRS.

4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in solicitations that are not conducted under the procedures of Part 12, unless the TIN, type of organization, and common parent information for each offeror will be obtained from some other source (*e.g.,* centralized database) in accordance with agency procedures.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 13.106–3 is amended by adding paragraph (e) to read as follows:

13.106–3 Award and documentation.

* * * * *

(e) *Taxpayer Identification Number.* If an oral solicitation is used, the contracting officer shall ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization (see 4.203), unless this information will be obtained from some other source (*e.g.,* centralized database). The contracting officer shall disclose to the contractor that the TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government (31 U.S.C. 7701(c)(3)).

PART 14—SEALED BIDDING

14.201–6 [Amended]

6. Section 14.201–6 is amended by removing and reserving paragraph (b)(2).

PART 15—CONTRACTING BY NEGOTIATION

15.209 [Amended]

7. Section 15.209 is amended by removing and reserving paragraph (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.204–3 is revised to read as follows:

52.204–3 Taxpayer identification.

As prescribed in 4.905, insert the following provision:

Taxpayer Identification (Oct 1998)

(a) *Definitions.*

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

☐ TIN:. _____

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) *Type of organization.*

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049–4;

☐ Other _____

(f) *Common parent.*

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

9. Section 52.212–3 is amended by revising the date of the provision and paragraph (b) to read as follows:

52.212–3 Offeror representations and certifications—Commercial items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Oct 1998)

* * * * *

(b) *Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).* (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN).*

☐ TIN: _____

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049–4;

☐ Other _____

(5) *Common parent.*

☐ Offeror is not owned or controlled by a common parent;

☐ Name and TIN of common parent:

Name _____

TIN _____

* * * * *

52.214–2 [Reserved]

10. Section 52.214–2 is removed and reserved.

52.215–4 [Reserved]

11. Section 52.215–4 is removed and reserved.

[FR Doc. 98–28955 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 13, 14, and 32

[FAC 97–09; FAR Case 97–304; Item II]

RIN 9000–AI10

Federal Acquisition Regulation; Electronic Commerce in Federal Procurement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 by removing Federal Acquisition Computer Network (FACNET) specific terms and requirements and replacing them with more flexible electronic commerce policies. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 30, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97–304@gsa.gov

Please cite FAC 97–09, FAR case 97–304, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda K. Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–09, FAR case 97–304.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, 14, and 32 to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 850 amends Titles 10, 15, 40, and 41 of the United States Code to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. Additionally, Section 850 provides a more flexible electronic commerce policy by promoting the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems and the use of nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information. In order to facilitate access to Federal procurement opportunities, Section 850 mandates that a single, Governmentwide point of entry be used that will provide universal public access to procurement opportunities Governmentwide. In the report submitted to Congress by the President's Management Council Electronic Processes Initiatives Committee entitled ''Electronic Commerce For Buyers and Sellers,'' the Committee endorsed a World Wide Web-based electronic system that would provide the private sector direct access to Federal procurement opportunities at a single location.

In an effort to distribute acquisition-related information to industry more quickly and economically, an electronic posting system is now being tested by several Federal agencies. This system will permit buyers to post solicitations and other pertinent information, in addition to notices, directly to the Internet, thus giving sellers access to this information through a single, Governmentwide point of entry. If testing demonstrates that this electronic posting system is capable of providing effective access to notices and solicitations through a single point of entry, consideration will be given by the Administrator of OFPP to designating it as the ''single, Governmentwide point of entry,'' and the FAR will be changed accordingly.

In the meantime, FACNET is the Governmentwide system that provides universal user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government. FACNET qualifies as the single, Governmentwide point of entry until the Administrator of the Office of Federal Procurement Policy designates the single, Governmentwide point of entry.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant negative impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is more flexible than the current FAR policy regarding the Federal electronic commerce architecture. It may be easier for some small entities to conduct business with the Federal Government over the World Wide Web, for instance, than using a value-added network to conduct business over FACNET. Since this may result in a positive impact on small entities, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The objectives of the rule are (1) to promote the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems, and (2) to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information. These objectives are stated in Section 850 of Public Law 105–85. The legal authority to use electronic commerce for Government contracting actions was confirmed in General Accounting Office (GAO) Advisory Opinion B–238449. The opinion concluded that electronic transactions can create legally binding contractual obligations in accordance with 31 U.S.C. 1501. The interim rule applies to all large and small entities that do business or are planning to do business with the Government. The ability to use electronic architectures other than FACNET, such as the World Wide Web, to conduct electronic commerce will increase competition by improving access to Federal contracting opportunities for the more than 72,995 vendors currently doing business with the Government, particularly small businesses, as well as many other vendors that find access to bidding opportunities difficult under the current system.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–09, FAR Case 97–304), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping requirements or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 850 of Public Law 105–85, which eliminates the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. Section 850 became effective on May 17, 1998. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 5, 13, 14, and 32

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 2, 4, 5, 13, 14, and 32 are amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 4, 5, 13, 14, and 32 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definition ''Electronic commerce''; revising the definition ''Federal Acquisition Computer Network (FACNET) Architecture''; and removing the definitions ''Full FACNET'', ''Governmentwide FACNET'', and ''Interim FACNET'' to read as follows:

2.101 Definitions.

* * * * *

Electronic commerce means electronic techniques for accomplishing business transactions including electronic mail or

messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

* * * * *

Federal Acquisition Computer Network (FACNET) Architecture is a Governmentwide system that provides universal user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government. FACNET qualifies as the single, Governmentwide point of entry pending designation by the Administrator of the Office of Federal Procurement Policy (OFPP).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Subpart 4.5, consisting of sections 4.500 through 4.502, is revised to read as follows:

Subpart 4.5—Electronic Commerce in Contracting

Sec.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal acquisition as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

4.501 Definitions.

Electronic data interchange (EDI), as used in this subpart, means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

Single, Governmentwide point of entry, as used in this subpart, means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

4.502 Policy.

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (*e.g.,* ''copy,'' ''document,'' ''page,'' ''printed,'' ''sealed envelope,'' and ''stamped'') shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (*e.g.,* transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by Section 30 of the OFPP Act (41 U.S.C. 426), the head of each agency, after consulting with the Administrator of OFPP, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures, (*e.g.,* the Federal Acquisition Computer Network (FACNET));

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(4) Include a means of providing widespread public notice of acquisition opportunities through the single, Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the agency head shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Section 5.101 is amended by revising paragraph (a)(2)(ii) and the last sentence of (a)(2)(iv) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) * * *

(2) * * *

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or FACNET solicitations are used, or when providing access to a notice of proposed contract action through the single, Governmentwide point of entry and the notice permits the public to respond to the solicitation electronically.

* * * * *

(iv) * * * Contracting offices using electronic systems for public posting that are not accessible outside the installation shall periodically publicize the methods for accessing such information.

* * * * *

5. Section 5.102 is amended by revising paragraphs (a)(2) and (a)(7) to read as follows:

5.102 Availability of solicitations.

(a) * * *

(2) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6 of the FAR;

* * * * *

(7) If electronic commerce is employed in the solicitation process, availability of the solicitation may be limited to the electronic medium.

* * * * *

6. Section 5.202 is amended by revising paragraph (a)(13), by removing (a)(14), and by redesignating (a)(15) as (a)(14). The revised text reads as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(13) The proposed contract action—

(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through FACNET or another means that provides access to the notice of proposed contract action through the single, Governmentwide point of entry; and

(iii) Permits the public to respond to the solicitation electronically; or

* * * * *

7. Section 5.203 is amended by revising paragraph (b) to read as follows:

5.203 Publicizing and response time.

* * * * *

(b) The contracting officer shall establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to—each proposed contract action (including actions via FACNET or for which the notice of proposed contract action is accessible through the single,

Governmentwide point of entry), in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

* * * * *

5.202, 5.203, 5.205, 5.207 [Amended]

8. In addition to the amendments set forth above, in Subpart 5.2, remove the term ''contract action'' or ''contract actions'' and add ''proposed contract action'' or ''proposed contract actions'', respectively, in the following places:

a. Section 5.202(a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8) (twice), (a)(9), (a)(10), (a)(11) (twice), (a)(12) (4 times), and (a)(14);

b. Section 5.203 introductory paragraph, (a) introductory text, (c), (d), (e) (twice), and (g);

c. Section 5.205(d)(2);

d. Section 5.207(c)(2)(xi), (e)(3) (twice), and (h).

9. Section 5.301 is amended by revising paragraph (b)(7) to read as follows:

5.301 General.

* * * * *

(b) * * *

(7) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold;

(ii) Was conducted by using FACNET, or access to the notice of proposed contract action was provided through the single, Governmentwide point of entry; and

(iii) Permitted the public to respond to the solicitation electronically; or

* * * * *

10. Section 5.503 is amended by revising paragraph (a)(2) to read as follows:

5.503 Procedures.

(a) * * *

(2) The contracting officer shall use the SF 1449 for paper solicitations. The SF 1449 shall be used to make awards or place orders unless the award/order is made by using electronic commerce or by using the Governmentwide commercial purchase card for micropurchases.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

11. Section 13.003 is amended by removing paragraph (c); redesignating paragraphs (d) through (i) as (c) through (h), respectively; and revising newly redesignated paragraphs (f) and (h)(3) to read as follows:

13.003 Policy.

* * * * *

(f) Agencies shall maximize the use of electronic commerce when practicable and cost-effective (see Subpart 4.5). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

* * * * *

(h) * * *

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers received electronically, see 13.106–2(b)(3); and

* * * * *

12. Section 13.102 is amended by revising the introductory text of paragraph (a) to read as follows:

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more convenient). A list of new supply sources may be obtained from the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration. The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

* * * * *

13. Section 13.104 is amended by revising the first sentence of paragraph (b) to read as follows:

13.104 Promoting competition.

* * * * *

(b) If using simplified acquisition procedures and not using either FACNET or providing access to the notice of proposed contract action through the single, Governmentwide point of entry, maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area.

* * *

14. Section 13.105 is amended by revising paragraph (a)(1) to read as follows:

13.105 Synopsis and posting requirements.

(a) * * *

(1)(i) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(ii) The single, Governmentwide point of entry is used at or below the simplified acquisition threshold for providing widespread public notice of acquisition opportunities and offerors are provided a means of responding to the solicitation electronically; or

* * * * *

15. Section 13.106–1 is amended by revising paragraphs (c)(1)(ii) and (f) to read as follows:

13.106–1 Soliciting competition.

* * * * *

(c) * * *

(1) * * *

(ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and

* * * * *

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including FACNET) if doing so would not interfere with the efficient conduct of the acquisition. For an acquisition conducted through FACNET, an agency must respond to telephonic or facsimile inquiries only if it is unable to receive inquiries through FACNET.

16. Section 13.106–2 is amended by revising the introductory text of paragraph (b)(3) to read as follows:

13.106–2 Evaluation of quotations or offers.

* * * * *

(b) * * *

(3) For acquisitions conducted using FACNET or a method that permits electronic response to the solicitation, the contracting officer may—

* * * * *

17. Section 13.106–3 is amended by revising paragraph (c) to read as follows:

13.106–3 Award and documentation.

* * * * *

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through FACNET or an electronic commerce method that employs widespread electronic public notice, notification to unsuccessful suppliers shall be given only if requested or required by 5.301.

* * * * *

13.307 [Amended]

18. Section 13.307 is amended in paragraph (b)(1) by removing ''other electronic means,'' and inserting ''electronically,''.

PART 14—SEALED BIDDING

19. Section 14.205–1 is amended by revising the second sentence of paragraph (a) to read as follows:

14.205–1 Establishment of lists.

(a) * * * This rule need not be followed, however, when the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see part 13); the requirements are nonrecurring; or electronic commerce methods are used that transmit solicitations or notices of procurement opportunities automatically to all interested sources. * * *

* * * * *

14.400 [Amended]

20. Section 14.400 is amended by removing ''contract'' and inserting ''contracts''.

PART 32—CONTRACT FINANCING

32.1103 [Amended]

21. Section 32.1103 is amended in paragraph (a) by removing ''13.003(f)'' and inserting ''13.003(e)''.

[FR Doc. 98–28956 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 24, 33, and 52

[FAC 97–09; FAR Case 97–015; Item III]

RIN 9000–AH72

Federal Acquisition Regulation; Alternative Dispute Resolution—1996

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–09, FAR case 97–015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 6, 24, 33, and 52 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition, revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act, and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

A proposed rule was published in the **Federal Register** at 62 FR 55678, October 27, 1997. Comments were received from eight sources. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds guidance pertaining to, but does not significantly alter the procedures for, alternative dispute resolution. Alternative dispute resolution procedures allow voluntary resolution of issues in controversy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, it does reduce the information collection requirements relating to Certification of Claims, OMB Control No. 9000–0035. Accordingly, a request to reduce the total burden hours has been submitted to OMB.

List of Subjects in 48 CFR Parts 6, 24, 33, and 52

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6, 24, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 24, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302–3 is amended by revising paragraph (a)(2)(iii) to read as follows:

6.302–3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) * * *

(2) * * *

(iii) To acquire the services of an expert or neutral person (see 33.201) for any current or anticipated litigation or dispute.

* * * * *

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

3. Section 24.202 is amended by adding paragraph (c) read as follows:

24.202 Prohibitions.

* * * * *

(c) A dispute resolution communication that is between a neutral person and a party to alternative dispute resolution proceedings, and that may not be disclosed under 5 U.S.C. 574, is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(3)).

PART 33—PROTESTS, DISPUTES, AND APPEALS

4. Section 33.201 is amended by revising the definition ''Alternative dispute resolution (ADR)'' to read as follows:

33.201 Definitions.

* * * * *

Alternative dispute resolution (ADR) means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

* * * * *

33.204 [Amended]

5. Section 33.204 is amended in the fifth sentence by removing ''Public Law 100–522'' and inserting ''(5 U.S.C. 571, *et seq.*)''.

6. Section 33.207 is amended by revising paragraph (a) to read as follows:

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding $100,000.

* * * * *

7. Section 33.214 is amended at the end of paragraph (a)(3) by inserting ''and''; at the end of paragraph (a)(4) by removing ''; and'' and inserting a period; by removing paragraph (a)(5); by revising paragraph (b); and by adding paragraphs (f) and (g) to read as follows:

33.214 Alternative dispute resolution (ADR).

* * * * *

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

* * * * *

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.233–1 is amended by revising the date of the clause and paragraphs (d)(2)(i) and (g) to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (Dec 1998)

* * * * *

(d)(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

* * * * *

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

* * * * *

[FR Doc. 98–28957 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 31 and 52

[FAC 97–09; FAR Case 89–012; Item IV]

RIN 9000–AC90

Federal Acquisition Regulation; Pay-As-You-Go Pension Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) for consistency with the cost accounting standards for composition and measurement of pension cost and adjustment and allocation of pension cost. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501–0692. Please cite FAC 97–09, FAR case 89–012.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 54 FR 13022, March 29, 1989. The issuance of an interim rule was necessary because the United States Court of Appeals had ruled that FAR 31.205–6(j)(5) was inconsistent with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and that the controlling regulation was CAS 412.

Since the 1989 interim FAR rule was published, the Office of Federal Procurement Policy, Cost Accounting Standards Board, made substantial changes to CAS 412 and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413), relating to accounting for pension costs under negotiated Government contracts. These proposed changes were published and made available for public comment on November 5, 1993 (58 FR 58999). Public comments were received and considered in the development of the final CAS rule which was published in the **Federal Register** at 60 FR 16534, March 30, 1995. The changes in the final CAS rule addressed pension cost recognition for qualified pension plans subject to the tax-deductibility limits of the Federal Tax Code, problems associated with pension plans that are not qualified plans under the Federal Tax Code, and problems associated with overfunded pension plans.

A proposed FAR rule was published in the **Federal Register** at 62 FR 49900, September 23, 1997, to provide consistency with the revised CAS 412 and CAS 413. The rule proposed to (1) revise the definitions at FAR 31.001 to conform with the CAS Board's definitions; (2) delete references to ''unfunded pension plans'' since CAS 412 and CAS 413 no longer refer to unfunded pension plans; (3) add new language to FAR 31.205–6(j) to address transfer of assets to another account within the same fund, to address the allowability of costs for nonqualified pension plans using the pay-as-you-go cost method, and to address both CAS requirements and all other situations not covered by CAS; (4) add new language at FAR 31.205–6(j)(6), which was previously reserved, to refer to CAS 412 and CAS 413 for treatment of pension plans using the pay-as-you-go cost method; (5) provide other editorial changes to make FAR 31.001 and 31.205–6 consistent with the language of CAS 412 and CAS 413; and (6) revise the clause at FAR 52.215–27, Termination of Defined Benefit Pension Plans, to conform the clause with the

proposed FAR Part 31 changes. Six sources submitted comments in response to the proposed FAR rule. All comments were considered in the development of this final rule.

This final rule amends FAR 15.408, Solicitation provisions and contract clauses; FAR 31.001, Definitions; FAR 31.205–6, Compensation for personal services; and FAR 52.215–15, Pension Adjustments and Asset Reversions. The final rule differs from the proposed rule by—(1) revising FAR 31.205–6(j)(3)(i)(A) to address the deferral of pension costs pursuant to a waiver under the Employee's Retirement Income Security Act of 1974 (ERISA); (2) revising FAR 31.205–6(j)(3)(v) to clarify that the provisions of FAR 31.205–6(j)(4) apply if the withdrawal of assets is a pension plan termination under ERISA; (3) revising FAR 31.205–6(j)(4)(i) and 52.215–15(b) to clarify the calculation of the adjustment amounts for both CAS and non-CAS-covered contracts; and (4) making a number of editorial revisions, including changes (*e.g.*, renumbering FAR 52.215–27 as FAR 52.215–15) resulting from publication of Federal Acquisition Circular 97–02 on September 30, 1997 (62 FR 51224).

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15, 31, and 52

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 15, 31, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.408 is amended by revising paragraph (g) to read as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

(g) *Pension Adjustments and Asset Reversions.* The contracting officer shall insert the clause at 52.215–15, Pension Adjustments and Asset Reversions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Part 31 of the FAR.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 31.001 is amended by removing the definitions ''Actuarial liability'' ''Termination of gain or loss'' and ''Unfunded pension plan''; by adding, in alphabetical order, the definitions ''Actuarial accrued liability'', ''Nonqualified pension plan'', ''Qualified pension plan'' and ''Termination of employment gain or loss''; and by revising the definitions of ''Accrued benefit cost method'', ''Actuarial assumption'', ''Actuarial cost method'', ''Actuarial valuation'', ''Funded pension cost'', ''Normal cost'', ''Pension plan'', and ''Projected benefit cost method'', to read as follows:

31.001 Definitions.

Accrued benefit cost method means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; *i.e.*, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.)

* * * * *

Actuarial accrued liability means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

Actuarial assumption means an estimate of future conditions affecting pension cost; *e.g.*, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

Actuarial cost method means a technique that uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

* * * * *

Actuarial valuation means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

* * * * *

Funded pension cost means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

* * * * *

Nonqualified pension plan means any pension plan other than a qualified pension plan as defined in this part.

Normal cost means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

* * * * *

Pension plan means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to

beneficiaries of deceased employees, may be an integral part of a pension plan.

* * * * *

Projected benefit cost method means either—

(1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers; or

(2) A modification of the accrued benefit cost method that considers projected compensation levels.

* * * * *

Qualified pension plan means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

* * * * *

Termination of employment gain or loss means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

* * * * *

4. Section 31.201–5 is amended by revising the last sentence to read as follows:

31.201–5 Credits.

* * * See 31.205–6(j)(4) for rules governing refund or credit to the Government associated with pension adjustments and asset reversions.

5. Section 31.205–6 is amended by revising paragraphs (j)(1) through (j)(6) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) *Pension costs.* (1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined-benefit or defined-contribution pension plans. The cost of all defined-benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost, and 48 CFR 9904.413, Adjustment and allocation of pension cost. The costs of all defined-contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412 and 48 CFR 9904.413. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraphs (j)(2)(i) and (j)(3) through (8) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be funded by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be allocable in accordance with 48 CFR 9904.412–50(d)(3).

(ii) Pension payments must be reasonable in amount and must be paid pursuant to—an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans that are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in paragraph (j)(7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined-benefit pension plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412–40(a)(1)) assigned to the current accounting period, but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412–50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412–50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412–50(a)(4), and shall be allowable in the future period to which it is assigned, to the extent it is allocable, reasonable, and not otherwise unallowable.

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413–50(c). Determinations of unallowable costs shall be made in accordance with the actuarial cost method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising

the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205–19(a)(3) and (b), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(4) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(4) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(4)(ii) are unallowable in accordance with 31.205-41(b)(6).

(5) *Defined-contribution pension plans.* This paragraph covers those pension plans in which the contributions are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan in paragraph (j)(1) of this subsection.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(ii) The provisions of paragraphs (j)(3)(ii) and (iv) of this subsection apply to defined-contribution plans.

(6) *Pension plans using the pay-as-you-go cost method.* The cost of pension plans using the pay-as-you-go cost method shall be measured, allocated, and accounted for in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method shall be allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.215–15 is revised to read as follows:

52.215–15 Pension adjustments and asset reversions.

As prescribed in 15.408(g), insert the following clause:

Pension Adjustments and Asset Reversions (Dec 1998)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

(End of clause)

[FR Doc. 98–28958 Filed 10–29–98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97–09; FAR Case 96–610; Item V]

RIN 9000–AH99

Federal Acquisition Regulation; Rehabilitation Act, Workers With Disabilities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final without change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt the interim rule published in the **Federal Register** at 63 FR 34073, June 22, 1998, as a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202)

501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–09, FAR case 96–610.

SUPPLEMENTARY INFORMATION:

A. Background

On June 22, 1998, FAR Case 96–610, Rehabilitation Act, Workers with Disabilities, was published in the **Federal Register** as an interim rule. The FAR rule implemented Department of Labor (DoL) regulations at 41 CFR 60–741 that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). The rule amended FAR Subpart 22.14 and the clauses at 52.212–5, 52.213–4, and 52.222–36 to conform to the DoL regulations. No public comments were received in response to the interim rule. The interim rule is being adopted as a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely implements existing Department of Labor regulations and imposes no new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 22 and 52, which was published at 63 FR 34073, June 22, 1998, is adopted as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 98–28959 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–09; FAR Case 97–036; Item VI]

RIN 9000–AH95

Federal Acquisition Regulation; Civil Defense Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete the civil defense cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–09, FAR case 97–036.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on March 20, 1998 (63 FR 13771). The proposed rule deleted the cost principle at FAR 31.205–5, Civil defense costs. With the end of the Cold War, the special guidance provided in this cost principle is no longer deemed necessary. The acceptability of this type of costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31. The proposed rule is converted to a final rule without change.

One comment was received in response to the proposed rule. This comment was considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the FAR cost principles.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–5 [Removed and Reserved]

2. Section 31.205–5 is removed and reserved.

[FR Doc. 98–28960 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–09; FAR Case 95–020; Item VII]

RIN 9000–AH05

Federal Acquisition Regulation; Costs Related to Legal/Other Proceedings

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the allowability of costs incurred for qui tam suits in which the Government does not intervene. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–09, FAR case 95–020.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on June 20, 1996 (61 FR 31790). Seven sources submitted public comments. All comments were considered in developing the final rule.

This final rule clarifies the cost principle at FAR 31.205–47 as it relates to qui tam suits not joined in by the Government. The final rule also clarifies, at FAR 31.205–47(e)(3), that the maximum reimbursement contractors may receive for legal costs in connection with agreements reached under FAR 31.205–47(c) is 80 percent of otherwise allowable and allocable incurred costs.

Industry has commented that this coverage should be effective prospectively. After consideration of these comments, it is concluded that this coverage is properly characterized as a clarification. Nevertheless, it is recognized that certain Government contracting personnel and contractors may have had common misinterpretations of the regulatory coverage. Indeed, those inconsistencies are the catalyst behind this clarification. On August 24, 1995, the Defense Contract Audit Agency issued audit guidance that clarified audit treatment for qui tam legal fees. For qui tam legal fees incurred before August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the regulatory coverage, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–47 is amended by revising the introductory text of paragraph (b); by redesignating (c) as (c)(1) and adding (c)(2); and by revising paragraph (e)(3) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

* * * * *

(c) * * *

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

* * * * *

(e) * * *

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

* * * * *

[FR Doc. 98–28961 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 37

[FAC 97–09; FAR Case 97–302; Item VIII]

RIN 9000–AI09

Federal Acquisition Regulation; Service Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to expand the authority of the Department of Defense and the Coast Guard to enter into contracts that cross fiscal years.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy F. Olson at (202) 501–0692. Please cite FAC 97–09, FAR case 97–302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) amends 10 U.S.C. 2410a to authorize the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with regard to the Coast Guard when not operating as a service in the Navy, to enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–09, FAR case 97–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 37

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 32 and 37 are amended as set forth below:

1. The authority citation for 48 CFR Parts 32 and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.703–3 is revised to read as follows:

32.703–3 Contracts crossing fiscal years.

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (*e.g.*, 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a, 42 U.S.C. 3515, and paragraph (b) of this subsection), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (*e.g.*, contracts for expert or consultant services).

(b) The head of an executive agency, except NASA, may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 2410a and 41 U.S.C. 253l). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

PART 37—SERVICE CONTRACTING

3. Section 37.106 is amended by revising paragraph (b) to read as follows:

37.106 Funding and term of service contracts.

* * * * *

(b) The head of an executive agency, except NASA, may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 2410a and 41 U.S.C. 253l). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

* * * * *

[FR Doc. 98–28962 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 32

[FAC 97–09; FAR Case 97–609; Item IX]

RIN 9000–AI11

Federal Acquisition Regulation; Payment Due Dates

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that agencies may authorize amendment of the FAR payment clauses to specify a period shorter than 30 days for making contract invoice payments, provided such period is not less than 7 days. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–0692. Please cite FAC 97–09, FAR case 97–609.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232–25, Prompt Payment, and 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5

U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–09, FAR case 97–609), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 32:

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 32 is amended as set forth below:

1. The authority citation for 48 CFR Part 32 continues to read as follows:

PART 32—CONTRACT FINANCING

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 32.905 is amended in paragraph (a) by revising the introductory text to read as follows:

32.905 Invoice payments.

(a) *General.* Except as prescribed in paragraphs (b), (c), and (d) of this section, or as authorized in 32.908(a)(3) or (c)(3), the due date for making an invoice payment by the designated payment office shall be as follows:

* * * * *

3. Section 32.908 is amended by adding paragraphs (a)(3) and (c)(3) to read as follows:

32.908 Contract clauses.

(a) * * *

(3) As provided in 32.904, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (iii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

* * * * *

(c) * * *

(3) As provided in 32.904, agency policies and procedures may authorize amendment of paragraph (a)(1)(i) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

[FR Doc. 98–28963 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53

[FAC 97–09; Item X]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GSA Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53

Government procurement.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 6, 14, 15, 19, 32, 33, 36, 41, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended by revising entries ''41.004.2(c)'' to read ''41.202(c)''; ''52.241–2'' to read ''52.241–3''; ''52.241–6'' to read ''52.241–7''; and ''52.241–11'' to read ''52.241–1''; removing the FAR segment and the corresponding OMB Control Number entries for 52.211–5, 52.253–1, and 53.105; and adding entries, in numerical order, to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
* * * * *	
52.227–14	9000–0090
52.227–15	9000–0090
52.227–16	9000–0090
52.227–17	9000–0090
52.227–18	9000–0090
52.227–19	9000–0090
52.227–20	9000–0090
52.227–21	9000–0090
52.227–22	9000–0090
52.227–23	9000–0090

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.302–3 [Amended]

3. Section 6.302–3 is amended at the end of paragraph (a)(2) introductory text by removing the colon and inserting a dash; and at the beginning of paragraphs (a)(2)(i) and (a)(2)(ii), by removing ''to'' and inserting ''To''.

PART 14—SEALED BIDDING

14.407–4 [Amended]

5. Section 14.407–4 is amended in paragraph (a) by revising the word ''amendment'' to read ''modification''.

PART 15—CONTRACTING BY NEGOTIATION

15.404–1 [Amended]

6. Section 15.404–1 is amended in the first sentence of paragraph (a)(7) by removing the word ''Resource'' and adding ''Reference''.

PART 19—SMALL BUSINESS PROGRAMS

7. Section 19.102(f)(4) is amended by revising the third sentence to read as follows:

19.102 Size standards.

* * * * *

(f)(4) * * * A listing is also available on SBA's Internet Homepage at http://www.sba.gov/gc. * * *

* * * * *

19.1004 [Amended]

8. Section 19.1004 is amended by revising the term ''Defense Mapping Agency'' to read ''National Imagery and Mapping Agency''.

PART 32—CONTRACT FINANCING

9. Section 32.705–1 is amended by revising paragraph (b) to read as follows:

32.705–1 Clauses for contracting in advance of funds.

* * * * *

(b) The contracting officer shall insert the clause at 52.232–19, Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract—

(1) Is funded by annual appropriations; and

(2) Is to extend beyond the initial fiscal year (see 32.703–2(b)).

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.104 [Amended]

10. Section 33.104 is amended in the last sentence of paragraph (e) by revising ''7 days'' to read ''5 days''.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.601–4 [Amended]

8. Section 36.601–4 is amended in the fourth sentence of paragraph (a)(4) by revising the term ''Defense Mapping Agency'' to read ''National Imagery and Mapping Agency''.

PART 41—ACQUISITION OF UTILITY SERVICES

41.103 [Amended]

11. Section 41.103 is amended in paragraph (a)(2) by revising ''40 U.S.C. 474(3)'' to read ''40 U.S.C. 474(d)(3)''; and in the first sentence of paragraph (a)(3) by revising ''(42 U.S.C. 2751, *et seq.*)'' to read ''(42 U.S.C. 7251, *et seq.*)''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.212–5 is amended by revising the clause heading and paragraph (b)(3) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Oct. 1998)

* * * * *

(b) * * *

____(3) 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).

* * * * *

52.244–6 [Amended]

13. Section 52.244–6 is amended by revising the date of the clause to read ''(Oct 1998)''; and in paragraph (c)(3) of the clause by removing the words ''Handicapped Workers'' and adding ''Workers with Disabilities''.

PART 53—FORMS

14. Section 53.228 is amended by revising paragraphs (h) and (i) to read as follows:

53.228 Bonds and insurance.

* * * * *

(h) *SF 273 (Rev. 10/98) Reinsurance Agreement for a Miller Act Performance Bond.* (See 28.106–1(h) and 28.202–1(a)(4).) SF 273 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(i) *SF 274 (Rev. 10/98) Reinsurance Agreement for a Miller Act Payment Bond.* (See 28.106–1(i) and 28.202–1(a)(4).) SF 274 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

* * * * *

15. Section 53.301–273 is revised to read as follows:

53.301–273 Reinsurance Agreement for a Miller Act Performance Bond.

BILLING CODE 6820–EP–U

REINSURANCE AGREEMENT FOR A MILLER ACT PERFORMANCE BOND
(See instructions on reverse)

OMB No.: **9000-0045**

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. DIRECT WRITING COMPANY*	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
	1B. STATE OF INCORPORATION
2. REINSURING COMPANY	2A. AMOUNT OF THIS REINSURANCE ($)
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT
	2C. STATE OF INCORPORATION

3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL*	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT:

(a) The Direct Writing Company named above is bound as surety to the United States of America on the performance bond described above, wherein the above described is the principal, for the protection of the United States on the contract described above. The contract is for the construction, alteration, or repair of a public building or public work of the United States and the performance bond was furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-280e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and countersecured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the performance bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

(a) The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the performance and to the extent of the "Amount of this Reinsurance," or any sum less than the "Amount of this Reinsurance" that is owing and unpaid by the Direct Writing Company to the United States under the performance bond.

(b) If the Direct Writing Company fails to pay any default under the performance bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the performance bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance" the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

(c) If there is a default on the performance bond for the "Amount of this Reinsurance," or more, the Reinsuring Company and the Direct Writing Company hereby covenant and agree that the United States may bring suit against the Reinsuring Company for the "Amount of this Reinsurance" or, in the case the amount of the default is for less than the "Amount of this Reinsurance," for the full amount of the default.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by offices possessing power to sign this instrument, and to be duly attested by officers empowered thereto, on the day and date above written opposite their respective names.

**Items 1, 2, 4D - Furnish legal name, business address and ZIP Code.* *(Over)*

5. DIRECT WRITING COMPANY		
5A(1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B(1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
6. REINSURING COMPANY		
6A(1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
6B(1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act performance bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(h).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

STANDARD FORM 273 (REV. 10-98) **BACK**

16. Section 53.301–274 is revised to read as follows:

53.301–274 Reinsurance Agreement for a Miller Act Payment Bond.

REINSURANCE AGREEMENT FOR A MILLER ACT PAYMENT BOND

(See instruction on reverse)

OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. DIRECT WRITING COMPANY*	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
	1B. STATE OF INCORPORATION
2. REINSURING COMPANY*	2A. AMOUNT OF THIS REINSURANCE $
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT
	2C. STATE OF INCORPORATION

3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL*	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT:

(a) The Direct Writing Company named above is bound as a surety on the payment bond described above, wherein the above described is the principal, for the protection of all persons supplying labor and material on the contract described above, which is for the construction, alteration, or repair of a public building or public work of the United States. The payment bond is for the use of persons supplying labor or material, and is furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-270e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and counter-secured in the amount above opposite the name of the Reinsuring Company (referred to as "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the payments bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

The purpose and intent of this agreement is (a) to guarantee and indemnify the persons who have furnished or supplied labor or material in the prosecution of the work provided for in the contract referred to above (hereinafter referred to as "laborers and materialmen," the term "materialmen" including persons having a direct contractual relation with a subcontractor but no contractual relationship expressed or implied with the contractor who has furnished the said payment bond) against loss under the payment bond to the extent of the "Amount of this Reinsurance," or for any sum less than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the "laborers and materialmen" on the payment bond; and (b) to make the "laborers and materialmen" obligees under this Reinsurance Agreement to the same extent as if their respective names were written herein.

THEREFORE:

1. The Reinsuring Company covenants and agrees -

(a) To pay the "Amount of this Reinsurance" to the "laborers and materialmen" in the event of the Direct Writing Company's failure to pay to the "laborers and materialmen" any default under the payment bond equal to or in excess of the "Amount of this Reinsurance"; and

(b) To pay (1) the full amount to the "laborers and materialmen," or (2) the amount not paid to them by the Direct Writing Company; in case the Direct Writing Company fails to pay the "laborers and materialmen" any default under the payment bond less than the "Amount of this Reinsurance."

*Items 1, 2, 4D - Furnish legal name, business address and ZIP Code.

(Over)

2. The Reinsuring Company and the Direct Writing Company covenant and agree that, in the case of default on the payment bond for the "Amount of this Reinsurance," or more, the persons given a "right of action" or a "right to sue" on the payment bond by section 2(a) of the Miller Act (40 U.S.C. 270b(a)) may bring suit against the Reinsuring Company in the United States District Court for the district in which the contract described above is to be performed and executed for the "Amount of this Reinsurance" or, if the amount of the default is for less than the "Amount of this Reinsurance," for whatever the full amount of the default may be. The Reinsuring Company further covenants and agrees to comply with all requirements necessary to give such court jurisdiction, and to consent to determination of matters arising under this Reinsurance Agreement in accordance with the law and practice of the court. It is expressly understood by the parties that the rights, powers, and privileges given in this paragraph to persons are in addition to or supplemental to or in accordance with other rights, powers, and privileges which they might have under the statutes of the United States, any States, or the other laws of either, and should not be construed as limitations.

3. The Reinsuring Company and the Direct Writing Company further covenant and agree that the Reinsuring Company designates the process agent, appointed by the Direct Writing Company in the district in which the contract is to be performed and executed, as an agent to accept service of process in any suit instituted on this Reinsurance Agreement, and that the process agent shall send, by registered mail, to the Reinsuring Company at its principal place of business shown above, a copy of the process.

4. The Reinsuring Company and the Direct Writing Company further covenant and agree that this Reinsurance Agreement is an integral part of the payment bond.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing the power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date in Item 1A written opposite their respective names.

5. DIRECT WRITING COMPANY		
5A.(1) SIGNATURE	(2) ATTEST SIGNATURE	*Corporate Seal*
5B.(1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
6. REINSURING COMPANY		
6A.(1) SIGNATURE	(2) ATTEST SIGNATURE	*Corporate Seal*
6B.(1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act payment bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(i).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

STANDARD FORM 274 (REV. 10-98) **BACK**

[FR Doc. 98–28964 Filed 10–29–98; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–09 which amend the FAR. The rules marked with an asterisk (*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–09 which precedes this document. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225.

LIST OF RULES IN FAC 97–09

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers (Interim)	97–003	Olson.
II	* Electronic Commerce in Federal Procurement (Interim)	97–304	Nelson.
III	Alternate Dispute Resolution—1996	97–015	O'Neill.
IV	Pay-As-You-Go Pension Costs	89–012	Olson.
V	Rehabilitation Act, Workers With Disabilities	96–610	O'Neill.
VI	Civil Defense Costs	97–036	Nelson.
VII	Costs Related to Legal/Other Proceedings	95–020	Nelson.
VIII	Service Contracts	97–302	Olson.
IX	Payment Due Dates	97–609	Olson.

Item I—Taxpayer Identification Numbers (FAR Case 97–003)

This interim rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105–32). The rule clarifies requirements for obtaining Taxpayer Identification Number (TIN) information from contractors and forwarding the information to payment offices; specifies that TIN information may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government; and clarifies and updates requirements for reporting contract information and payment information to the Internal Revenue Service.

(*Orders under Federal Supply Schedule (FSS) contracts.* Ordering officials are required to provide the FSS contractor's TIN (and other information) to the payment office for each order under an FSS contract. The General Services Administration is planning to establish an Internet based system by early 1999 that can be used by ordering officials to obtain this information. In the meantime, the information can be obtained from most FSS contract price lists or by requesting it directly from the FSS contractor prior to placing an order.)

Item II—Electronic Commerce in Federal Procurement (FAR Case 97–304) *

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, and 14, to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. In addition, this interim rule promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. In order to facilitate access to Federal procurements, Section 850 mandates that a single Governmentwide point of entry be used. Once the Administrator of the Office of Federal Procurement Policy (OFPP) designates the single Governmentwide point of entry, the FAR will be changed accordingly. FACNET qualifies as the single, Governmentwide point of entry until the Administrator of OFPP designates the single, Governmentwide point of entry. Federal procurement systems that employ electronic commerce shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

Item III—Alternative Dispute Resolution—1996 (FAR Case 97–015)

This final rule amends FAR 6.302–3, 24.202, 33.2, and the clause at 52.233–1 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition; revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act; and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

Item IV—Pay-As-You-Go Pension Costs (FAR Case 89–012)

The interim rule published as Item I of FAC 84–44 is converted to a final rule with amendments at FAR 15.408, 31.001, 31.205–6, and the clause at 52.215–15. The rule amends the FAR for consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96–610)

The interim rule published as Item V of FAC 97–05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60–741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

Item VI—Civil Defense Costs (FAR Case 97–036)

This final rule deletes the civil defense cost principle at FAR 31.205–5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

Item VII—Costs Related to Legal/Other Proceedings (FAR Case 95–020)

This final rule amends FAR 31.205–47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for *qui tam* suits in which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205–47 prior to August 24, 1995. For *qui tam* legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205–47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

Item VIII—Service Contracts (FAR Case 97–302)

This final rule revises FAR 32.703–3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

Item IX—Payment Due Dates (FAR Case 97–609)

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232–25, Prompt Payment, and 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–28965 Filed 10–29–98; 8:45 am]

BILLING CODE 6820–EP–U

Federal Register

Friday
October 30, 1998

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 77

Safety Standards for Reporting Daily Inspections of Surface Coal Mines; Technical Amendment; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 77

RIN 1219–AB15

Safety Standards for Reporting Daily Inspections of Surface Coal Mines; Technical Amendment

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: MSHA is making a nonsubstantive technical amendment to its safety standard which requires reports of daily inspection for surface coal mines. This technical amendment updates the standard to allow a mine official with authority and responsibility equivalent to the mine officials specified in the existing standard to sign or countersign the daily inspection reports. MSHA is amending the language of the standard to reflect changes in the management structure of the mining industry because traditional management structures, including job titles, have changed at many mines.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, phone 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph (d) of existing 30 CFR 77.1713 provides that all recorded examination reports of daily inspections for hazardous conditions at surface coal mines shall include the action taken to abate hazardous conditions and shall be signed or countersigned each day by at least one of the following persons: (1) the surface mine foreman; (2) the assistant superintendent of the mine; (3) the superintendent of the mine; or, (4) the person designated by the operator as responsible for health and safety at the mine.

The requirement that the report ''be signed or countersigned'' helps assure that examination results are maintained and made available, and that the appropriate level of mine management is made aware of hazardous conditions or problems requiring attention. In addition, the signing and countersigning requirement helps assure the integrity of records and enables mine management to review the quality of the examinations.

The persons specified in paragraph (d) are responsible for health and safety in the mine and have the authority and are in a position to suspend operations and allocate resources to correct health and safety problems as they develop. However, the terms ''mine foreman,'' ''superintendent,'' and ''assistant superintendent'' may no longer describe the person with the authority and responsibility to correct problems within certain mine management structures in the coal mining industry. Not every operation employs persons with the titles enumerated in the standard.

Given the changing terminology used to describe some mine management titles in certain mining operations, an ''equivalent person'' can satisfy the requirement of the standard. An ''equivalent person'' would be a person with the same responsibility for safety and health at the mine as a person specified in paragraphs (d)(1) through (d)(4), and with the authority to suspend production if necessary and allocate resources from various segments of the operation to correct safety or health hazards as they develop.

MSHA has successfully used the term ''equivalent person'' in other rulemaking contexts in order to allow for alternative mine management titles. In MSHA's rulemaking for improved mandatory safety standards for ventilation in underground coal mines promulgated in 1996, MSHA received comments stating that some mines no longer use the terms ''mine foreman,'' ''mine manager,'' or ''superintendent.'' In order to address those comments and to provide for alternative management titles, the final ventilation rule incorporated the phrase ''or equivalent mine official'' in several standards which require the reporting and countersigning of the results of certain inspections in underground mines. The standards using the phrase ''equivalent mine official'' are: paragraph (d) of § 75.311 Main mine fan operation; paragraph (f) of § 75.360 Preshift examination; paragraph (a) of § 75.363 Hazardous conditions; posting, correcting and recording; and, paragraph (h) of § 75.364 Weekly examination.

The final rule published today provides that an official equivalent to an official listed in (d)(1) through (d)(4) of § 77.1713 must sign or countersign the examination report. The purpose of this change is to allow for persons with the functional authority and responsibility equivalent to those persons specified in the standard to sign or countersign the reports. For purposes of this standard, a general manager, mine manager, or business unit manager having the requisite safety responsibility and authority may be equivalent to a superintendent. Similarly, a production manager, maintenance manager, or operations manager may be equivalent to an assistant superintendent; and a production supervisor, maintenance supervisor, or pit foreman may be equivalent to a mine foreman. This list is not meant to be an exhaustive one, but merely illustrates the range of titles which may be encountered in mine management organizations today. In each case, the equivalent officials must have the authority and responsibility for correcting hazardous conditions or problems. In some mines, officials having these titles may not be equivalent officials and would not have authority to countersign in all instances. Other titles, in addition to those described above, may describe mine management officials with the appropriate authority and responsibility to correct hazards or allocate resources to resolve health and safety problems.

Allowing an ''equivalent person'' to sign or countersign the examination report does not reduce the protection afforded miners by the existing standard. In all cases, the mine official who signs or countersigns must have the equivalent authority and responsibility for correcting hazards and allocating resources as those persons listed in paragraphs (d)(1) through (d)(4) or the existing rule. This minor revision only recognizes changes in mine management structures and allows for persons equivalent in authority and responsibility to those already specified to sign or countersign the reports.

II. Procedural Matters

Pursuant to 5 U.S.C. 553(b)(3)(B), MSHA finds good cause that the notice and public comment procedures of the Administrative Procedure Act are unnecessary for this technical amendment. The minor revisions contained in this rulemaking are nonsubstantive in nature and do not affect the safety outcome of the rule. With this rulemaking, the Agency is reflecting changes in terminology in the industry to allow for an official equivalent in authority and responsibility to a specified official to sign or countersign the reports. The authority and responsibility of the official remain the same as in the existing standard.

III. Paperwork Reduction Act

This rule does not contain substantive changes to information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995. The paperwork requirements for § 77.1713 are approved under 1219–0083.

IV. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that the cost for this rule is the same as under the existing rule. The primary benefit of the final rule is that it reflects changes in terminology in the industry and allows for an official equivalent in authority and responsibility to a specified official to sign or countersign the reports. MSHA has determined that this final rule does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA traditionally has considered small mines to be those with fewer than 20 employees. For the purposes of the RFA and this certification, MSHA has analyzed the impact of the final rule on all mines, on those with fewer than 20 employees, and on those with 500 or fewer employees, and has concluded that there is no additional cost to the mining industry.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the final rule a factual basis for this certification. The Agency also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis.

Factual Basis for Certification

MSHA has determined that this rule will not have a significant economic impact on a substantial number of small entities. The final rule merely adds language that conforms the standard to terminology currently used in the mining industry. The Agency recognizes that some mine operations no longer use the terms ''mine foreman'', ''mine manager'', or ''superintendent.'' To provide for alternative management titles, the final rule incorporates the phrase ''a mine official with authority and responsibility equivalent to a person listed in paragraphs (1) through (4) of this section.''

V. Unfunded Mandates Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

VI. Executive Order 13045

In accordance with Executive Order 13045, MSHA has evaluated the environmental health or safety effects of the rule on children. The Agency has determined that the final rule will have no effect on children.

List of Subjects in 30 CFR Part 77

Mine safety and health, Surface mining.

Dated: October 23, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set forth in the preamble, Subpart R of part 77, subchapter N, title 30 of the Code of Federal Regulations is amended as follows:

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for Part 77 is revised to read as follows:

Authority: 30 U.S.C. 811.

2. Section 77.1713 is amended by revising paragraphs (d)(3) and (d)(4) and adding paragraph (d)(5) to read as follows:

§ 77.1713 Daily inspection of surface coal mine; certified person; reports of inspection.

* * * * *

(d) * * *

(3) The superintendent of the mine;

(4) The person designated by the operator as responsible for health and safety at the mine; or,

(5) An equivalent mine official.

[FR Doc. 98–29089 Filed 10–29–98; 8:45 am]

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Federal Register

Friday
October 30, 1998

Part VII

The President

Notice of October 27, 1998—Continuation of Emergency With Respect to Sudan

Federal Register
Vol. 63, No. 210
Friday, October 30, 1998

Presidential Documents

Title 3—

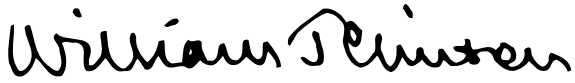
The President

Notice of October 27, 1998

Continuation of Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. By Executive Order 13067, I imposed trade sanctions on Sudan and blocked Sudanese government assets. Because the Government of Sudan has continued its activities hostile to United States interests, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
October 27, 1998.

[FR Doc. 98–29373
Filed 10–29–98; 11:29 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 63, No. 210

Friday, October 30, 1998

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Laws — **523–5227**

Presidential Documents

Executive orders and proclamations — **523–5227**

The United States Government Manual — **523–5227**

Other Services

Electronic and on-line services (voice) — **523–4534**

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

52579–52956 1
52957–53270 2
53271–53542 5
53543–53778 6
53779–54026 7
54027–54340 8
54341–54552 9
54553–55004 13
55005–55320 14
55321–55496 15
55497–55778 16
55779–55934 19
55935–56080 20
56081–56534 21
56535–56780 22
56781–57044 23
57045–57232 26
57233–57576 27
57577–57890 28
57891–58282 29
58283–58618 30

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7128 52957
7129 53271
7130 53541
7131 53777
7132 54027
7133 54029
7134 54551
7135 55309
7136 55311
7137 55315
7138 55317
7139 55319
7140 55935
7141 56073
7142 56075
7143 57889

Executive Orders:

12978 (See Notice of October 19, 1998) 56079
13011 (See EO 13103) 53273
13021 (amended by EO 13104) 56535
13067 (See Notice of October 27, 1998) 58617
13103 53273
13104 56535

Administrative Orders:

Presidential Determinations:

No. 98–36 of September 25, 1998 (See Department of the Air Force Notice) 56921
No. 98–37 of September 29, 1998 54031
No. 98–38 of September 29, 1998 54033
No. 98–39 of September 30, 1998 55001
No. 98–40 of September 30, 1998 55003
No. 98–41 of September 30, 1998 54035
Notice of October 19, 1998 56079
Notice of October 27, 1998) 58617
Memorandum of July 16, 1997 (See Environmental Protection Agency final rule) 57364

5 CFR

231 57045
315 57045
430 53275
534 53275
581 56537
582 56537
591 56430

Proposed Rules:

532 54616

7 CFR

Ch. XXXII 57233
25 53779
301 ..... 52579, 54037, 56537
319 ..... 54553, 56781
354 ..... 54553, 56781
457 ..... 55497, 55779, 57046
723 ..... 55937, 55939
800 55321
905 55497
906 54553
922 54341
931 55005
948 54342
958 55779
966 54556
987 54344
989 56781
993 52959
997 57891
998 57891
1150 57893
1207 53543
1464 ..... 55937, 55939
1710 53276
1724 58283
1726 58283
1951 56290

Proposed Rules:

1 53852
51 56096
201 55964
205 57624
225 54617
246 54629
300 55559
319 ..... 55559, 57935
800 52987
967 54382
1065 54383
1260 57627
1788 54385
1924 53616
1940 57935
1944 57935

8 CFR

212 55007
245 55007
286 54526

Proposed Rules:

103 56869
273 56869

9 CFR

3.....55012
50.....53546
77.....53547
78 .....53548, 53780, 53781
93.....53783
130.....53783

Proposed Rules:

381.....57078

10 CFR

50.....57236
72.....54559
625.....54196
1003.....58288

Proposed Rules:

35.....55559
50 .....52990, 54080, 54389, 56098
52.....56098
63.....55056, 57627
72.....56098
430.....58330

11 CFR

Proposed Rules:

102.....55056
103.....55056
106.....55056

12 CFR

Ch. 7 57938
28.....57047
30.....55462, 55468
201.....56785
208.....55462
220.....57237
224.....57237
263.....55468
364.....55462, 55468
570.....55462, 55468
611.....58289
615.....58289
620.....58289
627.....58289
701.....57942, 57943
711.....57945
714.....57950
1502.....57236
1503.....57236
1505.....57236
1506.....57236
1507.....57236

Proposed Rules:

614.....56873
616.....56873
618.....56873
621.....56873

13 CFR

121.....56786
125.....56786

14 CFR

Ch. 1 56539
23.....53278, 55012
25.....53278
33.....53278
39 .....52579, 52583, 52585, 52587, 52961, 53549, 53550, 53552, 53553, 53555, 53556, 53558, 53560, 53562, 53798, 53800, 54938, 54039, 54347, 54562, 54564, 54565, 54567, 54569, 54570, 55015, 55321, 55324, 55325, 55327, 55500, 55503, 55504, 55506, 55515, 55517, 55520, 55522, 55524, 55527, 55528, 55783, 55918, 55940, 56541, 56542, 56544, 56545, 56547, 57048, 57240, 57244, 57577, 57579, 57580, 57582, 57583, 57895, 58102, 58290
61.....53532
67.....53532
71 .....52589, 52590, 52591, 52963, 52964, 52965, 52966, 53279, 53802, 54349, 54350, 55329, 55330, 55331, 55530, 55531, 55532, 55942, 56548, 56549, 56550, 56551, 56707, 57585, 57586, 57587, 57588, 58291, 58299
73.....53279, 53804
95.....57899
97 .....54572, 54573, 57053, 57054
107.....57162
108.....57162
135.....53804
141.....53532
142.....53532
440.....55175

Proposed Rules:

39 .....52992, 52994, 54080, 54391, 54393, 54395, 54399, 54401, 54635, 55056, 55059, 55061, 55063, 55065, 55343, 55345, 55346, 55348, 55350, 55352, 55560, 56579, 56582, 57078, 57257, 57258, 57260, 57262, 57263, 57266, 57953, 57955
65 .....55290, 55920, 56125
66.....55290
71 .....52996, 52997, 52998, 52999, 53000, 53001, 53002, 53319, 53320, 53321, 53322, 53323, 53324, 53325, 53747, 54403, 54637, 55354, 55971, 55972, 55973, 55974, 55975, 55976, 55977, 55978, 57268, 57627
121.....58331
147.....55290

15 CFR

29.....53564
740.....55017
743.....55017
902.....57589

Proposed Rules:

Ch. VII.....54638

16 CFR

Proposed Rules:

308.....58524

17 CFR

4.....58300
10.....55784
201.....57164
275.....54308
279.....54308

Proposed Rules:

240.....54404
405.....53326

18 CFR

35.....53805
37.....54258
284.....53565

Proposed Rules:

2.....55682
3.....57081
4.....53853, 57086
153 .....53853, 55682, 57086
157 .....53853, 55682, 57086
161.....55562, 55563
250.....55562, 55563
284.....55562, 55563
341.....57081
342.....57081
343.....57081
346.....57081
357.....57081
362.....57081
375 .....53853, 55682, 57086
380.....55682, 55715
385.....55682, 57081

19 CFR

4.....52967
24.....55332

Proposed Rules:

171.....57628

20 CFR

10.....56752
404.....57690
422.....56552

Proposed Rules:

404.....54417
416.....54417
422.....57056
654.....53244
655.....53244

21 CFR

101.....57594
172.....57596
175.....56786
177.....55942
178 .....55944, 55945, 56789
201.....56789
343.....56802
520.....52968
522.....53577, 53578
556 .....53578, 54352, 57245
558 .....52968, 52969, 54352, 57245, 57248
573.....53579
814.....54042
878.....57059
900.....56555

Proposed Rules:

216.....54082, 55564
315.....55067
352.....56584
601.....55067
872.....53859
1020.....57957
1310.....55811

22 CFR

41.....52969

23 CFR

1240.....57904
1270.....53580
1275.....55796
1335.....54044
1345.....52592

24 CFR

401.....55333
402.....55333
598.....53262
888.....52858
1710.....54332

Proposed Rules:

35.....54422
36.....54422
37.....54422
91.....57882
570.....57882
3280.....58570
3282.....54528

26 CFR

1 .....52600, 52971, 55020, 55333, 56559
54.....57546
301.....56559
602 .....52971, 55020, 56559

Proposed Rules:

1 .....52660, 55355, 55564, 55918, 56878, 57636
53.....53862
54.....57546
301.....56878

27 CFR

53.....52601
178.....58272
179.....58272

28 CFR

2.....57060
25.....58303
500.....55774
503.....55774
551.....55774

Proposed Rules:

31.....55069

29 CFR

70a.....56740
71.....56740
1952.....53280
2520.....58335
2560.....58335
2590.....57546
4044.....55333, 58101

Proposed Rules:

4022.....57228, 57229
4044.....57228, 57229
4050.....57229

30 CFR

48.....53750
75.....53750
77.....53750, 58612
203.....57249
915.....55025
917.....53252

Proposed Rules:

57.....58104
72.....55811
75.....55811
936.....55979
935.....53618
943.....53003

31 CFR

586.....54575

Proposed Rules:

212.....54426

32 CFR

41.....56081

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 30, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Dairy promotion and research order; published 10-29-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

- Electric program standard contract forms; published 10-30-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

- Electronic commerce in Federal procurement; published 10-30-98
- Taxpayer identification numbers; published 10-30-98
- Technical amendments; published 10-30-98
- Workers with disabilities; employment and advancement; published 10-30-98

FEDERAL COMMUNICATIONS COMMISSION

Radio broadcasting:

- Broadcast licensees; main studio and public inspection file requirements; published 10-22-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

- Electronic commerce in Federal procurement; published 10-30-98
- Taxpayer identification numbers; published 10-30-98
- Technical amendments; published 10-30-98
- Workers with disabilities; employment and advancement; published 10-30-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

Fellowships, internships, training:

- Individuals from disadvantaged backgrounds; NIH clinical research loan repayment program; published 10-30-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered Species Convetion:

- Appendices and amendments—
  - Bigleaf mahogany; published 10-30-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

- Electronic commerce in Federal procurement; published 10-30-98
- Taxpayer identification numbers; published 10-30-98
- Technical amendments; published 10-30-98
- Workers with disabilities; employment and advancement; published 10-30-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

- Airbus; published 9-25-98
- Bob Fields Aerocessories; published 10-15-98
- Glaser-Dirks Flugzeugbau GmbH; published 9-17-98
- Short Brothers plc; published 9-25-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

- Hazardous materials transportation—
  - Miscellaneous amendments; reconsideration petitions denied; published 10-30-98¶

RULES GOING INTO EFFECT NOVEMBER 1, 1998

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

- Caribbean, Gulf, and South Atlantic fisheries—
  - Red snapper; published 10-30-98
- Northeastern United States fisheries—
  - Dealer and vessel reporting requirements; published 10-1-98
  - Dealer reporting requirements; published 10-29-98

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

- Royalty relief for producing leases and certain existing leases in deep water
  - Correction; published 10-27-98

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

- Allocation of assets—
  - Interest assumptions for valuing benefits; published 10-15-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Kiwifruit grown in—

- California; comments due by 11-3-98; published 9-3-98

Soybean promotion and research program; comments due by 11-3-98; published 9-4-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

- Brucellosis in cattle and bison—
  - Procedures for retaining class free State status; comments due by 11-2-98; published 9-17-98

Plant-related quarantine, foreign:

- Orchids in growing media; comments due by 11-2-98; published 9-1-98

AGRICULTURE DEPARTMENT

Aerial photographic reproductions; fee schedule; comments due by 11-6-98; published 10-7-98

COMMERCE DEPARTMENT

Grants and agreements with institutions of higher education, hospitals, other non-profit, and commercial organizations; uniform administrative requirements; comments due by 11-3-98; published 9-4-98

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

- Commerce control list—
  - Encryption items transferred from U.S. Munitions List to Commerce Control List; comments due by 11-6-98; published 9-22-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

- Sea turtle conservation; shrimp trawling requirements—
  - Turtle excluder devices; comments due by 11-6-98; published 10-14-98

Fishery conservation and management:

- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 11-5-98; published 10-6-98

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Foster grandparent program; comments due by 11-2-98; published 9-3-98

Retired and senior volunteer program; comments due by 11-2-98; published 9-3-98

Senior companion program; comments due by 11-2-98; published 9-3-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

- Ferroalloys production; comments due by 11-4-98; published 10-13-98

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

- Connecticut; comments due by 11-4-98; published 10-5-98

Drinking water:

- National primary and secondary drinking water regulations—
  - Chemical and microbiological contaminants; analytical methods for compliance

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from

GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 2411/P.L. 105–280
To provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission. (Oct. 26, 1998; 112 Stat. 2694)

H.R. 2886/P.L. 105–281
Granite Watershed Enhancement and Protection Act of 1998 (Oct. 26, 1998; 112 Stat. 2695)

H.R. 3796/P.L. 105–282
To authorize the Secretary of Agriculture to convey the administrative site for the Rogue River National Forest and use the proceeds for the construction or improvement of offices and support buildings for the Rogue River National Forest and the Bureau of Land Management. (Oct. 26, 1998; 112 Stat. 2698)

H.R. 4081/P.L. 105–283
To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas. (Oct. 26, 1998; 112 Stat. 2700)

H.R. 4284/P.L. 105–284
To authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia. (Oct. 26, 1998; 112 Stat. 2701)

S. 2206/P.L. 105–285
Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Oct. 27, 1998; 112 Stat. 2702)

Last List October 28, 1998

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